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THE

# CANONICAL STATUS OF PRIESTS

## IN THE UNITED STATES,

BY

REV. R. L. BURTSELL, D. D.

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# PREFACE.

Many friends, clerical and lay, who gave their attention to a series of articles published by me in the *New York Tablet* during the current year on "The Canonical Status of Priests in the United States," have persuaded me to put them together in pamphlet form. They are an abridgment of the conclusions reached by me after a careful study of the legislation of the Propaganda, and of the Baltimore Provincial and Plenary Councils for the Church in the United States. I have thought it wise to reproduce them exactly as they were published. It would have been a pleasure to amend any error into which I might have fallen, but none has been pointed out to me. No serious unfavorable criticism was, to my knowledge, made upon them, whilst theologians of ability, even high in position, have thought that these statements of the laws in a concise form would be very useful to the clergy. The laity will no doubt be also glad to have a plain statement of the enactments made for the equitable treatment of those who have the direct care of their spiritual welfare.

Obedience to properly framed laws is conducive to manliness, submission to caprice and whim, or merely personal standards of propriety, leads to fawning, flattery, meanness and worldly motives for the fulfillment of even priestly duties. Hence the clergy will derive real profit from the knowledge of the safeguards of law, with which their position is protected by the legislation of the legitimate Ecclesiastical Authority. The laity will have more confidence in their clergy, when they realize that their positions are not acquired or retained by worldly methods, but that the laws of the Church are directed constantly to promote real merit, and to guard the meritorious in their rights.

No disrespect and no disobedience can be charged against one who properly appeals to the law for the maintenance of his rights and it is only individual weakness that resents the submission of any action detrimental to a man and a priest, to the scrutiny of the forms of law prescribed by the Church, which is necessarily guided by the principles of natural equity.

R. L. BURTSELL.

# THE CANONICAL STATUS OF PRIESTS IN THE UNITED STATES.

## CHAPTER I.

Is there Canon Law in the United States? A glance at the status of the clergy before and after the Declaration of Independence. The clergy requests the Holy See to appoint a Superior, and afterward by permission of the Holy See selects Baltimore as the first Episcopal See, and nominates the first bishop. Bishop Carroll holds a diocesan synod in 1791. In 1810 Archbishop Carroll holds a meeting of the bishops of the United States. In 1829 Archbishop Whitefield convenes the first provincial Council of Baltimore. Corrections of the decrees by the Holy See.

The precise position in ecclesiastical law of priests in the United States cannot be very accurately defined, especially at the present time, when modifications are gradually being introduced by the concurrent action of the bishops and of the congregation of the Propaganda, which, for this country, is the mouthpiece of the Holy See.

A loose way of speaking has brought in vogue among the clergy, even reaching the bishops, the expression that "there is no Canon Law in this country." This principle, if it could be true, would annihilate all ecclesiastical legislative power, even that of the bishops.

The fact of our not being able to carry out many of the regulations of Canon Law has given rise to this misconception. All human, and therefore the purely ecclesiastical law, may be modified by the law-giver or by circumstances preventing the thorough execution of the law, or by custom.

Where there has been no such excuse for modification, the Canon Law has full sway throughout the whole Church.

A glance at the position of priests and clerics in the United States at the beginning of the revolution against England will help our investigation. The clergy in Maryland, and the other missions of the original United States had been directed by the Vicar Apostolic of the London district in England, who had appointed a Vicar General, a Father Lewis, Superior of the Jesuits over the missions in the colonies.

The greater part of the priests in the country were ex-Jesuits, the society having been suppressed in 1773. Father Lewis continued to act as Superior to those who wished to live by the rules of the Society, and as Vicar General over all. Father Carroll, on February 20, 1782, wrote to Father Plowden, his friend in England: "I regret that indolence prevents any form of administration from being adopted which might tend to secure posterity a succession of Catholic clergymen and secure to them a comfortable subsistence. I said that the former system of administration, that is, everything being in the power of a Superior, continued; but all those checks upon him, so wisely provided by our former constitutions, are at an end." Father Lewis called, on June 27 and November 26, 1783, general meetings of the priests to deliberate on the state of religion. At the latter meeting the clergy, in view of the acknowledged political independence of the United States from England, addressed a memorial to the Holy See to solicit the nomination of a Superior in "spiritualibus," to be chosen from among themselves.

They appointed also a committee to draw up a regulation "to establish a form of government for the clergy and lay down rules for the administration and government of their property." On October 11, 1784, they adopted the regulation reported by the committee establishing a regular chapter and district chapters, appointing a Procurator distinct from the Superior in Spiritualibus, subjecting the latter's measures to the approval of the district chapters.

Father Farmer comments on this regulation in a letter to Father Carroll on January 19, 1785: "We may have a voluntary union among ourselves, I allow, but it cannot constitute us a canonical body of clergy unless declared and appointed as such either by the Supreme Pastor or rather by a bishop set over us by him. Our association, even in temporalibus, I am afraid will be looked upon rather as a combination."

Meanwhile the Holy See had already watched the end of the struggle for independence, and as early as July 28, 1783, through the Nuncio at Paris, had taken steps to release the churches in the United States from spiritual subordination to England, and asked Franklin, then Ambassador to Paris, to obviate any difficulty to the appointment of a Vicar Apostolic with the dignity of a bishop.

The clergy, in the meeting of October, 1784, having heard of this letter and of the steps taken to obtain the consent of Con-

gress, which had declared the matter not within its jurisdiction, formulated the following curious resolution:

It is the opinion of the majority of the chapter that a superior *in spiritualibus* with powers to give confirmation, grant faculties, dispensations, bless oils, etc., is inadequate to the present exigencies of religion in this country. *Resolved* therefore,

*First*—That a Bishop is at present unnecessary.

*Second*—That if one be sent, it is decided by the majority of the chapter that he shall not be entitled to any support from the present estates of the clergy.

*Third*—That a committee of three be appointed to prepare and give an answer to Rome conformable to the above resolution.

*Fourth*—That the best measures be taken to bring in six proper clergymen as soon as possible, and the means be furnished by the chapter out of the general fund, except when otherwise provided.

On May 12, 1784, the Nuncio at Paris wrote to Father Carroll for the information necessary for the guidance of the Holy See in the establishment of a bishop to be appointed in the quality of Vicar Apostolic, and on June 19, 1784, the Holy See, in accord with the early request of the missionaries, appointed one of themselves Superior of the Mission, and selected for this position Father Carroll. The missionaries, ascertaining the determination of Rome to appoint a bishop for the mission, requested that he should not be a mere Vicar Apostolic, but a bishop with a title from a regularly fixed See in this country. Pius VI. acceding to their wish by decree of the congregation of the Propaganda of July 12, 1789, directed the priests exercising the ministry in the United States to assemble and determine in what city the See should be, and who of themselves seemed most worthy to be raised to the Episcopacy—a privilege granted as a favor, and for that time only. The officiating priests nominated Father Carroll. This choice was ratified at Rome on November 6, 1789, when Pius VI. founded the Episcopal See of Baltimore, instituting Father John Carroll as first Bishop. He was consecrated at Lulworth Castle Chapel by Right Rev. Bishop Walmsley, Father Charles Plowden delivering the sermon on the occasion.

In the first diocesan synod of 1791, in the fourth session, priests, regular or secular, are forbidden to hear confessions without previous approbation of the bishop, or after it has been withdrawn. Priests are also forbidden, under threat of suspension, to abandon the congregation assigned them, to transfer themselves to another without Episcopal consent, and fixing there a residence to attempt to exercise parochial functions.

In the third session, 7th decree, it is ordered that the offerings made at the service on Sundays and festivals by the people shall be divided into three parts, one for the support of the priests, the other for the poor, and the third for the Church. And in the fifth session, No. 23, the faithful are taught their obligation of supporting the Church and pastors under mortal sin.

In the first meeting of the Archbishop and bishops of the United States, in 1810, some articles of ecclesiastical discipline were drawn up, in which it was ordained, first, that priests approved in any diocese of the United States may exercise faculties in the neighboring dioceses and if they left their own diocese without an *Exeat* they are not allowed to use these faculties beyond two months from the time of their departure, unless they shall have received them anew from the bishop into whose diocese they have passed; and secondly, that superiors of regular or secular congregations were not to be allowed to withdraw, against the bishop's wish, their subjects when the bishop had entrusted them with the care of souls.

In 1829 Archbishop Whitefield convened the first Provincial Council of Baltimore, to which all the bishops in the United States, then forming the one Ecclesiastical Province of Baltimore, were called. We find an important declaration made in this Council with regard to the relations of bishops and priests in the United States and of priests toward one another. It will be well for us to transcribe it, as it is the first formal attempt to define these relations.

The Provincial Council in its decrees as approved by the Holy See declares

In No. 1. "As it has been called into doubt by certain persons whether the prelates of the Church in these United States had the right to send the priests to any part of the diocese to exercise the sacred ministry, and to recall them as they judged fit in the Lord: we admonish all priests dwelling in these dioceses, whether ordained therefor, or adopted therein, that remembering the promise of their ordination, they decline not to go to the mission designated by the bishop, if the bishop should judge that therein a sufficient and decent support could be had, and that said office suited the health and strength of the priests."

(They declare that they do not wish to interfere with the privileges of religious, nor to make any innovation with regard to parochial benefices, of which they say one only is so far known in these United States, in the city of New Orleans.)

In No. 2. "We decree and declare that any priest ordained for

any diocese of this province, is bound by force of the oath taken at his ordination to remain in the same diocese, and to obey his Prelate till he has been canonically released. We decree also that by this obligation is bound any priest adopted into any diocese: we declare to be thus adopted any priest coming from another diocese as soon as his testimonials and the dismissory letters of the prelate to whom he had been subject, are shown by the priest himself to the ordinary to whom he wished to become subject, and by him are definitely accepted. By these decrees we do not in any way wish to contradict whatever Benedict XIV clearly teaches in regard to priests who may wish to pass to some religious order."

No little light will be thrown upon our subject by calling attention to the corrections made by the Holy See to the decrees as originally drafted by the Fathers of the Council. They had in the first decree said that "priests by the virtue of the promise taken in ordination were obliged to obey the bishop commanding them to attend to any mission within the diocese, and thence recalling them as he thought fit in the Lord." On this we have a most important declaration from the Holy See through the congregation of the Propaganda: "In the first decree of the Baltimore Council it is decreed that priests who exercise the ministry in the dioceses of the United States are removable at will from the churches and missions which they serve. It is in accord with the Council of Trent that priests should not be ordained unless attached to a church or 'sacred institution' (loco pio) for whose need or utility they are appointed. Generically the church which the priests must serve is the diocese to which they belong, specifically it is the establishment (locus) to which they are assigned by the bishop."

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## CHAPTER II.

The Propaganda quotes Benedict XIV to restrict an improper extension of the obligations which spring from the obedience promised by priests at ordination.

The Propaganda in its instruction upon the decrees of the first Provincial Council of Baltimore of 1829, (*Collectio Lacensis Tom III, page* 22) continues to comment upon the original draft of the two first decrees to indicate the extent of the obedience resulting from the promise made by priests at their ordination, pointing out that this promise does not entail the strict obligation of going wherever the bishop may direct; nor does it suppose the right of the bishop to remove a priest from any place to which he has already

been assigned. The general law supposes that every priest shall be attached to a determined diocese, and also to a special position which carries with it fixity of tenure, unless there arise a serious and just cause for change. The Fathers of the Council were inclined to exaggerate their authority even to the infringement of the spirit of the universal legislation of the church, and they are told to revise their decree so as to place it in conformity with, or at least to avoid contradiction of the general practice. The Propaganda says:

"The Baltimore Council declares this removability to proceed from the solemn promise of obedience made by priests to the bishops when they are ordained, and therefore it is determined in the first decree that 'by virtue of the promise taken in ordination they are held to obey the bishop commanding them to attend any mission within the diocese.' Benedict XIV, speaking of this promise of obedience, says: 'Neither do we think that the solemn promise of obedience and reverence which the priest makes in the hands of the ordaining bishop, according to the very old custom of the Church, is to be held as a merely meaningless form. Rather we willingly recognize that the priest by virtue of that promise is bound by the law not to depart from the Church to which in ordination he was assigned without permission from the bishop."

"This being so, it seems to the Sacred Congregation that the Baltimore bishops speaking about that obedience have attached more (*graviori modo iltam explicasse*) serious meaning to it than Benedict XIV. For that most wise Pontiff affirmed that that promise produced the effect that a priest without the bishop's permission cannot depart from the church to which he was assigned in ordination; but the Baltimore Council decrees that 'by virtue of the promise taken in ordination priests are *obliged to obey the bishop commanding them* to attend to any mission in the diocese.' Therefore it would please the congregation that these words should be used in the decree: We *admonish* priests that *remembering* the promise taken in ordination they should not decline to attend to any mission designated by the bishop."

"The second decree establishes that a priest 'by virtue of the promise taken in ordination is obliged to remain in a diocese and obey the bishop until he has been canonically released.' This is more in accord with what has been above shown to have been taught by Benedict XIV. Some words might, however, be added to show that in regard to priests wishing to pass to a religious order those things are to be observed which in the above constitution are taught by Benedict XIV."

We may here consider that the Propaganda wishes to keep before the eyes of the bishops in the United States the general discipline of the Church in such a way as to prevent their narrowing its interpretation by local utility or even necessity.

The promise of obedience in ordination is too general an accompaniment of ordination to allow the narrow and strict interpretation which circumstances of local needs tempted the bishops then to attribute to it. It will suffice to recall the title of patrimony alone on which ordination is very frequently given, yet those ordained with this title, though making the identical promise of obedience to the bishop, are not obliged to do more than fulfill certain obligations of the priesthood without devoting themselves directly to the care of souls.

Any such obligation in this country would more naturally spring from the "title of the mission" under which priests are generally ordained, and which derives much of its force from the oath made by the priest to devote himself to the care of souls and to serve the diocese for which he is ordained. Though even here the Propaganda applauds and recommends "that priests be admonished (not commanded), that remembering the promise taken in ordination (not by virtue of the promise), they should not decline to attend to any mission designated by the bishop."

Yet its calling attention to the fact that it is in accord with the Council of Trent, that usually in ordination there is a fixed place assigned to the priest in the shape of a special "sacred establishment" (*locus pius*) let this be a parish church, a chaplaincy or a vicariate, or other similar appointment, shows that it is supposed that in every case this assignment is to be permanent (though not strictly perpetual), because not to be changed without a grave and serious reason; and even then the Sacred Congregation will use no word implying the obligation of accepting another local appointment. The obligation of obedience of a secular priest is entirely different from that of a religious bound by the vow of a religious community, whereby he subjects himself to do all commanded by the superior that is not sinful, and has renounced the right to a choice or the exercise of his own will, though even the superior of a religious community is restricted in his commands by the constitution of the order. The secular priests' obedience, promised at the reception of Holy Orders is almost negative in its character, forbidding him to leave the diocese or his charge without permission of the bishop; but not obliging him (above all if he has a just cause to decline) to accept any *in particular* at his ordination.

If Archbishop Carroll had been the presiding genius of this Provincial Council, he would not have been misled into narrowing too stringently this obligation of obedience, remembering the frank way in which he had stated it in a letter of 1779, quoted in De Courcy Shea's History of the Church in the United States. He writes: "I have care of a very large congregation. * * * Yet because I live with my mother, for whose sake alone I sacrificed the very best place in England, and told Mr. Lewis (the Vicar-General), that I did not chose to be subject to be removed from place to place, now that we had no longer the vow of obedience to entitle us to the merit of it, he does not choose to bear any part of my expenses."

He understood and makes clear the distinction between the obligation by which he was held when a Jesuit to go wherever sent by the superior from the obedience which he owed the Vicar-General, even though he had full powers to govern the Church in the United States from the Vicar Apostolic of the London District, who was really the bishop without the direct title.

Benedict XIV. in Lib. III. De Serv. Dei Beatif. cap. XLI., par. 9, says of members of regular communities, bound even by the solemn vow of obedience:

"The Superior is to be obeyed in whatever belongs to the rule of the Order, and in those things that may be deductions of the rule, but in other things that are not deducible from the rule the obedience is not necessary but a matter of greater perfection."

The general laws of the Church, as also the diocesan statutes, when conformed to the general law, are the guides and limits of the obedience of the secular priests, those having the care of souls having special duties which spring from their office which they assume voluntarily, or as is the case in this country, they promise to assume when ordained.

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## CHAPTER III.

The transfer of priests at the will of the bishop supposes the properly regulated will founded upon a conscientious judgment. Canon De Angelis sets forth the principles of natural equity recognized in Canon Law for dealing with priests removable at will. An unfair transfer entitles to a recourse to the Superior, by whom rehabilitation will be required.

The Propaganda, while insisting with the Fathers of the Baltimore Council of 1829, upon a moderate interpretation of the obedience of a priest to his bishop in view of the promise made at

his ordination, took occasion to call attention to the reciprocal and equitable obligation contracted thereat by the bishop to deal with the priest not according to whim but with mature judgment, remembering the account that the bishop will be called to give to the Lord of the proper administration of his diocese. When the will of the bishop is mentioned as the guide for his action, he is not allowed to follow his whim or caprice, or even his pleasure, but a judicious determination to provide for the welfare of both priest and people, whence is derived the expression of the limitation of his will: "As he determineth in the Lord."

Hence the Propaganda emphasized first the generic relation of the priest to the diocese. As he is not free to leave it without permission from the bishop, so the bishop is not free to cut him off from it. This reciprocal obligation is made still stronger in this country where the title of mission, under which priests are generally ordained, is not derived from the bishop but from the Propaganda: whence even where there should arise serious cause for cutting off a priest from a diocese, it cannot be done without the Propaganda's consent.

After mentioning the generic relation to the diocese, the Propaganda reminded the bishops of the general church legislation, whereby each priest at his ordination is assigned to a particular church or pious establishment to which he is to be attached permanently, that his temporal maintenance may not be in jeopardy. The bishop is not supposed to remove him from the one to which he has been assigned and which has been accepted without a serious and a just cause, that is, from the welfare of religion and of souls, or to use the accepted formula, "prout in Domino judicaverit." At any time if the bishop should deal arbitrarily in his removal in regard to any priest, the latter has a right to have recourse to the canonical superior of the bishop, who may claim the right of deciding upon the sufficiency of the cause for removal, and if not satisfied of its reasonableness, will insist upon his restoration to his charge or office. We deem it proper to fortify this position with the opinion of a Canonist who died but recently and was fully alive to all the circumstances of Catholic and Missionary countries that might have tended to do away with the former discipline of the Church in this regard; circumstances to which, especially in Missionary countries, appeal is made to suggest an utter variance from the former equity of Canon Law. Very often this comes from the false notion that Canon Law does not bind Missionary countries, that therefore everything is left to the will of the Superior or Bishop, who may

mistakingly consider himself in these circumstances the source of all law. If the bishop was always wise in his judgment, less inconvenience would result from this notion. The Pope does not deem himself the capricious originator of natural equity; but as the Canon law is the outcome of natural equity, so the Pope deems himself bound to act in accord with it. One of these first equitable principles of natural law compels the law-giver not to take away from individuals their personal rights, except where their exercise is incompatible with the general good. All law is made for the common welfare. Hence the Pope never gives a prohibition, nor makes a removal, nor obliges the taking of a burden except where the public good prompts his action, and hence has always a serious and just cause for which he knows how to give an account to the Just Judge. But as soon as it is said that a "certain occupant of a position is removable at will ("*amoviblis ad nutum*")—some think that the "*ad nutum*" means the pleasure, the whim, the caprice, aye, and sometimes even the spite of the superior. Canon De Angelis was professor of Canon Law in the Roman Seminary and a consultor of Propaganda. His book is therefore a useful guide for Catholic and missionary countries. In tom. 1, part 2, page 55, he says: "Temporary vicars, that is, removable at will, have not canonical institution, but simple 'deputation'; nor is such vicariate apt to become a title for ordination because of the want of perpetuity, for they can of their own accord renounce it, nor must the renunciation be necessarily subject to the acceptation of the Bishop. But here it may be asked: 'Can movable vicars be removed without cause, so that it is in the power of the senders to remove them in whatsoever manner, and so that they have no remedy in law to arbitrary dealings against them? To this question to-day principally is required a direct and full reply, because the question is red hot. The answer in my judgment may be thus given: In the first place I remark that against the decree of removal of a movable vicar there is no true appeal but a recourse to the Pontiff, for as their position is not determined by law as is that of titular parish priests and perpetual vicars, hence the ordinary remedy of law does not belong to them whereby to complain of their denied rights, but only a recourse which in all cases belongs to these removed clerics from 'a certain unwritten equity,' as Cardinal de Luca says in Part 1 De Benef, Disc 97, No. 13. And this unwritten equity will be explained below. It is to be remarked, however, that the bishop or other person removing, is not obliged to explain to the removed vicar the cause of his removal, but only to

make known his wish to effect the removal; but he is obliged to reveal this cause or motive to the Supreme Pontiff, to whose tribunal recourse is had; or at least to indicate the whole process of removal, that he may admit or reject the recourse. It is thirdly to be remarked that there is a great difference between the simple removal of a temporary vicar and his suspension 'ex informata conscientia.' For though even for the suspension 'ex informata conscientia' the bishop is not obliged to reveal to the suspended one the motives which induced him to proceed; yet it is certain that they are to be made known to the Supreme Pontiff to whom recourse has been had, and on the other side, unless there were serious reasons, this suspension 'ex informata conscientia' does not hold, as it is a real punishment which is not admitted except for crime." On pages 58 and 59 he writes:

"As to bishops' dealings with regard to secular clergymen, who are 'vicars removable at will,' I consider the following to be held from the answers of the Sacred Congregations:

"1. If the recall of the vicar takes place from 'hatred and malice,' then there is the case of rehabilitation or retention of these vicars in the office from which they have been deposed. This is most openly admitted by Cardinal De Luca (in cit. dis. 97 num°, 11°). and by the 'Rota,' in Causa Hispalens, 21st June, 1641, Coram Pentingero, even though the Rota held that the bishops could remove said temporary vicars without cause. * * *

2. If likewise the recall should cause loss of honor or disgrace, or be seriously prejudicial to the vicar, then the recall without cause should be annulled and the vicar retained in his office, as is held by Cardinal De Luca loco cit.

3. Illness or old age is not sufficient cause for the removal of the vicar, "temporaneus in beneficio,"—appointed temporarily to a benefice—if when young and in health he attended to his duty. In this the laws make no distinction between perpetual and temporary benefices, as is shown by Fagnanus in cap Consultationibus de clerico Aegrotante num, 45; and that this is carried out in mere offices in accord with the practice of the Apostolical curia is shown by the same author. The same is felt by Reiffenstuel, in Commentar, ad lit de Clerico Aegrotante, not only in regard to benefices but also as to Ecclesiastical administrations and offices. And this is the decision of Cardinal De Luca (in disc, 20 de regalibus admateriam officiorum.) This is shown by the authors to be the decision of the Sacred Congregation of the Council, which on May 25, 1822, retained all the income to a temporary vicar, who on account of very advanced age was powerless to give

his service to the cure of souls, though the ordinary had explained that thus no provision could be made for the ministry.

4. If no cause of recall has been brought and made known to the Sacred Congregation, it has been the custom to annul the recall and retain the temporary vicar in the office from which he has been deposed. Giraldi (in addit ad Tract. de Officio et Pot. Par. cap 115), speaking of temporary vicars says: "And though removable parish priests may be removed as often as their removal is needed, yet it must be understood that in fact they are not to be removed without legitimate cause." (Sacred Congregation Council, 11th July, 1626, S. Cong. of Bish. and Reg. in Sulmonensi, 24 May, 1645, and 16th May, 1653), and a little further on he says: "All removable curates can be removed at the will of the diocesan bishop. But they must not be removed except for reasonable and just cause. For the rule of justice is to be followed, and the honor consulted of those who are to be removed, and this is the "unwritten equity" of which Cardinal de Luca spoke above in Part I, Disc. 97, De Benef, and from which a recourse or complaint to the Superior is allowable against the exercise of whim; at least involving a certain summary judgment of the cause for which the removal takes place, as there hardly happens a case without some hatred, or without a prejudice resulting in one's reputation or otherwise."

He cites the decisions of the Sacred Congregation insisting upon this rehabilitation, where no cause was adduced, reversing, as he says, the excessive rigor shown by the Rota in the case cited above; and concludes that "temporary vicars may be removed for a serious cause, but whilst not properly an appeal, still a recourse for redress to the Superior is always open to them."

While, therefore, from grave reasons of administration, there may at times be allowed a transfer of a movable priest from one church or establishment to another, there is the right of complaint to the superior, if this transfer be not made so as not to imply any blame or fault in the one so removed. Hence a fair similarity, as far as possible an equality of positions must be clear in the transfer. The priest's reputation must be protected from any arbitrary act. If his good name is at all touched, he has a positive right to the proper process and trial in self-defence. And if any such injury should unfairly or unjustly be attached to the transfer, the Equity of the Church requires his reinstatement.

## CHAPTER IV.

The title of ordination the source of the priest's maintenance. A glance at the various titles of ordination. The title of mission the usual title in the United States. The Propaganda lays down the principle of collateral obligations of priest and diocese which flow from the title of mission. This title of mission is not to be considered ordinary and permanent for the United States, but extraordinary, and allowed as a privilege for a time.

Anciently the church building was called a "title," and as there was a rule that no one should be promoted to orders who was not attached to a special church, there arose the formula that "a cleric was not to be ordained without a title." Thus the ordained were assigned to a special service connected with their church or title, and from it drew the means of maintenance. Soglia (Just. Jur. Priv. Cap. VI de Sac. Ord., § LIV, de Tit. Ord.) says; "As the cleric was bound to the perpetual service of his church, so he acquired the right to obtain from its revenues according to his office a competent maintenance. The title thus produced a double obligation: the cleric was bound to a perpetual service of the church, and the church was bound to provide for the maintenance of the cleric." The original title of ordination was that of the service of the church, "Servitii Ecclesiæ." This was the only title for many centuries. But in course of time the property of the churches was divided and the portion belonging to the clergy was also apportioned in so many parts according to the various offices assigned to the clergy. These portions received the name of benefices; whence the expression to be ordained with a title became equivalent to that of being ordained with a benefice. This benefice was necessary even for the reception of the minor orders (D'Angelis Prael Jur. Can, Lib. I, Tit. XI, pp. 228 et seq.). By neglect of the church discipline many were ordained without a benefice or title, though they were considered to have incurred irregularity and were thereby unfitted to attend to the ministry of the Church. They very often took part in secular business to the lowering of the clerical order and to the scandal of the faithful. The abuse had become so great that the third Council of Lateran could only see its way to the prohibition where there was not sufficient support from a special church to confer the orders of deaconship and the priesthood unless it were shown that the applicant for these orders had sufficient means from his own or the paternal estate. Innocent III, sought to extend this rule to all clerics but failed. Since the time of Innocent IV, a title of ordination has been required for sub-deaconship; but, already patrimony was deemed a sufficient title for ordination. Thence arose another abuse that some bishops would confer orders on

those who would promise not to trouble them for their support. The Council of Trent sought to recall the early discipline of requiring that every cleric should be attached to a special church or pious institution (loco pio) and made the rule that no one should receive sacred or major orders if not provided with a benefice sufficient for a proper support; limiting the right of the bishops to confer orders on the holders of patrimony or a pension only when the needs of the diocese required it. The pension here mentioned is a fixed revenue assigned to the holder in perpetuity in sufficient amount for the support of the ordained, whether it be derived from possessions of the Church or from the laity. The Council declared any bishop to incur suspension, reserved to the Pope, from conferring orders for three years who should ordain any one not having the title of benefice or of patrimony, with the compact that the ordained should not require his support from the bishop. This is still in force. By the Council's decree any one so ordained incurred suspension from the exercise of the order conferred; but since the Bull "Apostolicæ Sedis" of Pius IX, in 1869, this is considered to be no longer in force; nor do those now ordained with a false title incur censure.

In favor of the religious life, a special title, that of "Poverty," was attached to the solemn profession in an approved religion, giving to the professed a right to their maintenance from the possessions of the order or from the alms given by the piety of the faithful to the community. Akin to this is the title of "Common Table" (Mensæ Communis), granted to certain communities recognized by the Holy See which either have no vows or only simple vows, and whence the members may pass to the secular priesthood. The community is held responsible for their maintenance until they are canonically detached from the community. The precise purpose of the Church in requiring a title of ordination is to avoid the lowering of those constituted in sacred orders, that they may have no excuse to engage in secular pursuits or be compelled to beg for their maintenance; hence the principle that has always guided the Church required that those to be ordained should in perpetuity be provided with a sufficient and decent support.

One of the many disciplinary matters to be adjusted at the General Council of the Vatican was, it is well known, the question of the title of the ordination. Throughout Europe, even in Catholic countries, the confiscation of ecclesiastical possessions by the civil governments has well nigh done away with ecclesiastical benefices; and the pensions that are allowed by some of them to

priests actually in service of the churches are not granted till after ordination. Hence it has been necessary, where the title of patrimony or pension cannot be had, to apply to the Holy See for a relaxation of the law of the Council of Trent. It has been the custom of the Holy See to avoid granting an indefinite relaxation, but it has limited the dispensation to a fixed number of persons, or to a fixed body or community of persons, placed in specially mentioned circumstances. (Lucidi, De Visit Sac. Lim., Part 1a, Vol. 10, p. 461.)

A special provision was established with the express sanction of the Holy See for the countries subject to the sacred congregation of the Propaganda that sacred orders might be conferred with the title of Mission, which imposes the obligation of their maintenance upon the Apostolic Vicariates or Dioceses for which they are ordained, and which they bind themselves by oath to serve for life. "They obtain the necessaries of life from the sacred ministry to which they are attached." As this is the usual title under which sacred orders are usually conferred in the United States, we shall consider this title at some length.

The ordination under this title was granted as a privilege to certain Pontifical Colleges, among which pre-eminent is the Urban College of the Propaganda, established and endowed with this privilege by Urban VIII. in 1638.

An oath is an obligatory accompaniment of the title of mission; which is in this form:

"I N., son of N., of the diocese or vicariate of N., promise and swear that after I have been promoted to sacred orders, I shall not enter any religion, society or congregation, nor make therein a profession without a special permission of the Apostolic See, or of the Sacred Congregation for the propagation of the faith.

"I vow likewise and swear that in this diocese or vicariate or (as they have to swear who are not as yet affiliated to a mission) in the mission to which it will please the Holy See or the Sacred Congregation for the propagation of the faith to assign me, I shall during life work and labor in the administration of sacred things for the salvation of souls under the entire direction and jurisdiction of the reverend prelate, who is for the time the ordinary: I shall also do so, if by permission of the Holy See I shall enter any religion or any society or community of regulars, even if I shall have made therein my profession.

"I vow and swear that I understand this oath and its obligation, and that I shall fulfill it—so may God help me and these holy gospels of God."

Very often the administering of this oath was neglected. The fathers of the First Provincial Council of St. Louis even asked the Holy See to remit the obligation of taking the oath binding perpetually to the service of a specified diocese; but in vain.

As the ordained under the title of the mission is bound to the perpetual service of the specified mission, diocese or vicariate, this mission or diocese is most reasonably obliged to provide for his support as long as by fault of his he does not render himself unfit for the administration of sacred things. The Congregation of the Propaganda has always taken upon itself the duty of enforcing the mutual obligation. It denies to the priest the privilege of leaving the exercise of the ministry in that diocese or vicariate, nor will it allow him to be dismissed without its permission, or that of the Holy See. A decree of the Eighth Provincial Council of Baltimore, held in 1855, stated "that priests who are ordained under the title of the mission, or should afterward acquire it, lose their title, when they receive from their bishop a dismissorial letter absolving them from all obligation of serving the mission of that diocese, and by this fact they are deemed suspended from their order until they recover it or obtain another canonical title: the same is to be held of those promoted to orders under another canonical title who afterwards lost it. They do not recover the title of the mission until being adopted into another diocese they take an oath binding them to perpetually serve its missions." The Congregation of the Propaganda sent at once notice that it was preparing an instruction on the Title of Ordination, wherein It would lay down the principles which govern the Propaganda, and must be followed by the prelates having subjects ordained or accepted under this title. This was published on April 17, 1871. In it is laid down that this is an extraordinary title, under the special supervision of the Sacred Congregation of Propaganda, which will not grant its use permanently, but only for a restricted number of cases, or at most for a fixed period of time. It cautions the bishops, when wishing to use the title for ordination, to have in mind the serious duties that this title imposes of working for life in the arduous tasks of the sacred ministry. Hence only those are to be allowed this title whose endowments fit them for and whose character promises perseverance in this important labor. The chosen ones are to be obliged to take the oath to serve for life the mission to which they are to be attached.

This title may be obtained before actual presence in the mission, but requires the readiness to go to the mission, when the

superiors desire it. And as private good must cede to the public welfare, those ordained under this title are forbidden to enter religion (a regular order) until the Holy See, after consultation with the Ordinary, may deem it allowable. This title, as the other titles of ordination, according to the rules laid down in canon law, may be lost by the priest or may be withdrawn by the Ordinaries, but only with the consent of the Propaganda, to which belongs the right to absolve from the obligation of the oath. The loss of any title does not involve the suspension of the priest, though the ordinaries must oblige the ordained to substitute another title, as is laid down in the Canons. Pirrhing states (Lib. III., Tit. VIII., De Concess Praeb. § III.) that privation, even of a benefice, is decreed in some cases by the violation itself (ipso jure) of the law; and in other cases by the sentence of the Judge for certain crimes specified by the law as homicide, perjury, sacrilege, sodomy, adultery, etc.

Any regular priest absolved from the solemn vows, or a priest leaving any congregation, must be compelled to obtain another title before they depart; and if they remain in the missionary country they must prove that they have the means for their decent support.

Any one raised to sacred orders under the title of the mission who gives up the office of missionary loses his title and must seek another. If he wishes to devote himself to the service of another mission, to obtain the title from this mission it will be necessary to have recourse to the Holy See. The privilege of ordaining under this title given the prelate of this mission does not avail for the case of adopting a missionary priest from another mission.

The Ordinaries of missions are exhorted to avail themselves of the services of those having other titles, in accordance with the laws; nor can they compel them to take the title of the mission. In fact the congregation exhorts the Ordinaries to introduce as far as possible the other lawful titles for ordination..

Undoubtedly the Sacred Congregation wishes to relieve itself of the burden placed upon it by this title of mission, which is under its special supervision and imposes upon it responsibilities toward the priests ordained under it.

As long as the bishops use this extraordinary title they must be prepared for the exercise of the Sacred Congregation's ordinary right to inquire directly into the case of each priest whose title or right to maintenance derived therefrom is in any way touched. If the other titles were substituted the Sacred Congregation would

consider itself called upon to interfere in those cases only where a formal appeal is lodged against an alleged arbitrary act of a bishop.

This certainly has the advantage in behalf of the priest that he has always a right if aggrieved to have recourse to the Sacred Congregation, which is guided by the fixed rules and traditions of the church and free from any personal whim or even from any private peculiar standard of right and wrong.

Even after a trial by the bishop's court, though suspension and other disciplinary corrections and even removal from office may be inflicted, the privation of the title of the mission can only take effect by consent of the Propaganda. Yet as the very obligation of maintenance of missionaries springs from their working for the welfare of souls, or in the words of the Propaganda, "they who are ordained under the title of the mission obtain their support from the Apostolic ministry in the mission to which they are attached," the Propaganda in 1879 in its supplement to its Instruction of 1878 declares that it had not intended in any way to affect or weaken the juridical effects of Decree 77 of the second Plenary Council of Baltimore, which enacted that all who having by their own fault rendered themselves unfit for the work of the ministry and were by the bishop's sentence deprived of its exercise could have no just claim to demand their support from the bishop; saving of course the right of appeal to the Metropolitan and to the Holy See.

This would not however be the case if by illness or other cause without moral fault the priest were incapacitated from the exercise of the ministry. The title of the mission burdens the diocese or apostolic vicariate with the obligation of his maintenance. The title gives birth to the two-fold obligation—on the part of the priest to serve the mission for life, and on the part of the mission to secure him for life a proper maintenance.

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## CHAPTER V.

The title of mission prevents entrance to any regular community without the consent of the Holy See. This title sometimes is a source of greater perfection than the profession in a religious order. Comparison between the obedience of a secular priest and that of a member of a religious community. Voluntary transfers from one diocese to another much facilitated by recent concessions of the Propaganda.

The title of ordination gives permanent security of maintenance to all priests whether they have the care of souls or not, whether they are rectors of defined districts and congregations, chaplains

of institutions or assistants whose duty it may be to aid others, wherever their services are required. In this country the title of mission makes this adequate provision for all the priests belonging to the prefecture apostolic, vicariate apostolic or diocese, and the first duty of the Ordinary, who is the bishop, is toward the clergy, that while they devote themselves to the care of souls, they may obtain a decent and honorable maintenance. If at any time this is unattainable where the priest is located, he has a just claim upon the bishop for such arrangements as will enable him to attain what is his due.

"They who are ordained under the title of mission obtain their support from the Apostolical Ministry to which they are attached." This title therefore carries with it the obligation of attending to the care of souls, which is not necessarily attached to the other titles. Thus there are communities of priests having for their title that of "Poverty," supported by alms, whose object is a life of contemplation and self-sanctification, who are not called upon for the exercise of any duties connected with the charge of the people. Many secular priests ordained under the title of patrimony or benefice never hear confessions nor preach, nor are called upon for any work directly in behalf of the souls of others.

There is undoubtedly more vagueness in the title of mission and less stability of maintenance, than is attached to the other titles, yet the Propaganda when granting the use of this title emphasizes the importance of making this stability sufficient to take away from the priest all excuse for greed or unworthy begging, or anything which may be improper in a clergyman or has the tendency to lower the clerical order in the eyes of the people. But a reasonable stability is given by burdening the whole diocese, or vicariate, or prefecture apostolic with the maintenance of the priest, and the obligation devolves upon the bishop or ordinary to provide for the wants of any priest who has spent himself in the ministry, nor can the bishop condition this support upon any unreasonable restrictions, or such as do not really spring from the care of souls. Nor can this support be denied any one who has not been legally, that is by the proper forms of law, deprived of his title. There is no greater intensity of obedience arising from the title of mission than from the promise of obedience given at ordination, and to which the Propaganda prevented the Fathers of the First Council of Baltimore from attaching more importance than was allowed by Benedict XIV.

In fact, one of the main purports of the title of the mission was in accord with the moderation attributed to that obedience

as explained by Benedict XIV., viz: that a priest should not leave a charge to which he was assigned without permission from the Ordinary. Not a few ordained as apostolic missionaries, because of the vagueness of the title, thought themselves free to go from one bishop to another without giving proper notice, to offer their services where they thought there was greatest need, or deemed themselves most welcome; hence the Propaganda required that they take an oath to work for life in that special diocese or vicariate for which they were ordained, or else in that to which they would afterwards with their own consent be assigned by the Propaganda. The Propaganda never claimed the right under this oath of sending any one from one diocese to another, nor does the Holy See ever claim the right of sending priests from one diocese to another, unless this is expressly stipulated at some time before they have bound themselves to the Ecclesiastical state for life. Even in religious Orders where there is the solemn vow of obedience, no member of the community may be sent without his consent away from the special district or province to which he belongs when he takes the vow, unless he adds a special proviso of his willingness to go wherever his superiors may choose to send him. The title of mission therefore is to prevent a priest from going from one vicariate apostolic or diocese to another. In that vicariate or diocese it binds him to devote himself for life to the care of souls, and this obligation is imposed because the diocese or vicariate apostolic is subjected to the burden of providing for his temporal wants. This title is perpetual in its effects or permanent for life, wherein the title of mission does not differ from any of the other titles of ordination. With the consent of the Propaganda a substitute title may be obtained. Thus one from Europe who has given many years of his life to the missions may be authorized to return to his native soil, where he may obtain the title of benefice or even of patrimony, and undoubtedly the same privilege would be accorded to any native of this country if he were able to present the title of patrimony as a substitute. The Propaganda has repeatedly warned our bishops not to decline the other titles accepted by the Church. Another may be permitted to enter a religious order in which the title of "common table" or of "poverty" is the regular title. Yet the Propaganda reserves to itself the right of directing those ordained under the title of the mission to give their services to the care of souls, even if they have been permitted to take the solemn vows in any Order.

In fact the oath required by the title of mission had for its

main purpose the remedy of an evil that arose to the great detriment of the people. Some missionaries, either because they found their temporal maintenance to be too precarious while depending upon their own individual exertions in a restricted locality, to provide shelter, food and raiment for themselves, sought the protection of an organized religious body of which the members could, in case of need, be relieved by funds stored elsewhere, and hence were willing to make even the solemn profession of the "Vow of Poverty," which at any rate secured for them from the community, the necessaries of life and very often luxuries compared with the meagre results of their own individual exertions. Others being in missionary fields alone at great distances from the consolations of the spiritual help and direction of their brethren in the priesthood were alarmed for their own salvation, or at any rate they dreaded the loss of greater sanctification resulting from their state of isolation, and yearned to become members of a religious community whose members need not be limited to any one particular field for too prolonged a period of spiritual destitution, but were habitually recalled at intervals to partake of the spiritual as well as temporal intercourse with their brethren. The general discipline of the Church allows priests ordinarily to renounce even grave and important charges after due notice to, but even without the consent of the bishop, that they might enter a religious community to devote themselves to a more secure way of preserving themselves from the temptations and cares to which contact with the world might render them liable; or also to obtain for themselves better opportunities of prayer, of direction and all other things conducive to a higher state of individual sanctification.

The Propaganda had a long struggle to do away with this privilege even on the part of missionaries, and found itself compelled to invoke the aid of the Supreme Pontiff to remind them that they were procuring their own greater sanctification by the sacrifices that they were making in behalf of souls, whilst the Lord would provide a supply of extraordinary graces for their isolated condition. Whilst not attaching to the oath an absolute engagement not to enter a regular order, the Propaganda undertook to require an examination of the motives that prompted the missionaries to abandon their post for the religious state. If the temporal needs were at the bottom of the desire for change, It proposed to provide for their maintenance. Even if It allowed the entrance into some religious order, It required ordinarily

that an order should be selected of which the care of souls was a primary object.

The direction of the bishop or vicar apostolic, of which the oath makes mention, as binding the ordained under the title of the mission, extends to all those things that are connected with the care of souls ; and hence the obedience of a missionary priest is more extensive in its scope than the promise of obedience made by every priest at his ordination to his bishop. As we have seen, this general promise of obedience only subjects the priests to the general laws of the clerical state made by the church, as developed in the diocesan statutes, whilst he that receives a charge of souls is bound to observe all the laws reasonably connected with the welfare of those under his charge. As the strict obligation of obedience of a religious according to Benedict XIV. extends and is limited to those things which are reasonably deducible from or justly reducible to the rule of his Order so also a priest in care of souls has special obligations derived from his special office. Yet the obedience of a secular priest is not of the same kind or at all as extensive as that required of a member of a regular community (a community under rule). It does not affect his daily routine of life, nor suppose curtailment of personal liberty, where this does not really interfere with the welfare of souls. Anything that would entail neglect of one's duty may reasonably be forbidden. But beyond this a secular priest is free to give his time to legitimate intellectual work or lawful amusement of his own choosing. He cannot be obliged to follow monastic regulations or constant personal direction, concerning which he had no anticipation and made no engagement when ordained.

It is well also to call attention to the new provisions made at the instance or with the consent of the Propaganda by the Third Plenary Council of Baltimore concerning this title of mission. The voluntary change from one diocese to another is much facilitated, especially within the ecclesiastical province to which he belongs. An ecclesiastical province is formed of a certain number of dioceses, whose bishops are called suffragans of an archbishop. Thus the States of New York and New Jersey are one ecclesiastical province, of which the Archbishop of New York is the Metropolitan, or holder of the chief See. The New England States are another ecclesiastical province, having Boston for the Metropolis.

The Propaganda has relaxed the restriction of the oath imposing the obligation for life to any one diocese, so as to allow a priest, with the consent of his bishop, to make arrangements with another bishop within the same province to become attached to the latter's

diocese, to whom the same subordination is to be given, and who undertakes the same burdens in behalf of the priest, to which the former bishop was subject, and all this can be done without the necessity of having recourse to the Propaganda. This is a great convenience to the priest who desires a change and does not often know how to go about getting the permission of the Propaganda, a far off Ordinary Superior with whom, however, priests are not in easy correspondence. It is also of advantage to the bishops who thus are relieved of the necessity of waiting for a long period for instructions for their guidance in the minor minutiæ of the government of their dioceses.

If the change is to be made outside of the ecclesiastical province to which the priest belongs, he must apply to a bishop, who is expected to require a three, or even may exact a five years' probation before admitting him as one of the diocesan clergy. If the applicant had been ordained under the title of Mission the Propaganda must be asked by the bishop adopting him to release him from his obligation to his former diocese, and then the bishop is to administer to him the oath binding him in the same way to the diocese into which he is permanently taken, of which fact the former bishop is to be notified.

If there should be any neglect or omission upon the part of the bishop to comply with his part of these requirements, the priest will not suffer, because if he has gone through the three years', or when properly notified of its requirement through the five years' probation, he will be considered by the law as incorporated into the new diocese, in spite of the omission of any technicality. Greater difficulties are put in the way of those who belong to a regular community with the obligation of perpetual vows, and who wish to obtain permission to join the ranks of the secular clergy. The bishops are expected to come to a private understanding with the superiors of the orders before admitting them to the three or five years' probation.

The Church, in the true spirit of equity and charity that permeates her laws, is most anxious to see that not only the lambs of the flock but the sheep and the inferior and higher grades of shepherds are all properly sheltered and cared for. Hence her priests are or should be secured for life from all necessity of begging for their personal support and of sordid greed or of taking part in manual labor, and the material business of life in order that they may properly devote themselves to the duties of religion and of charity. Even where human frailty may have allowed to be broken some of the vessels, where precious treasures have been

placed by the Good Shepherd, His church is always willing to gather up and unite the fragments, to make anew good use of them as a source of life to souls famishing for the bread that came down from heaven.

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## VI.

Gradual development of Canon Law after the first provincial Council of Baltimore. This Council gives attention to the proper formation of parishes, and to the relative positions of priests. Yet the rectors' direction of the assistants is in relation to the parish duties.

Canon De Angelis (Lib. 1, Tit. XI, page 234) tells us that the question of the title of ordination was one of the serious matters prepared to be submitted to the Vatican Council for new adjustment and adaptation to the circumstances of the times. Certainly throughout the Catholic world to-day the fewness of benefices, consequent upon the confiscation of church property by so-called Catholic governments, and the dearth of patrimony on the part of the great majority of those promoted to sacred orders have seriously upset the former arrangements made by the Church concerning this title of ordination. To supply the spiritual needs of the faithful, and to secure for them the ministration of a sufficient number of priests, it has been found necessary to undo the stringency of the regulations of the Council of Trent, and to show a great leaning to a return to the primitive practice in the Church of making the Apostolic Ministry, or the service of a special church the usual title.

In Catholic countries the times have brought about an enlargement of Church legislation in this regard. In the United States we are still in the formative process tending as fast as the Holy See can sefely induce us, and as our bishops' dread of stringent declarations of limitations of their authority will permit, toward the development of the principles of canon law, whose germs the Propaganda has insisted upon planting in the legislation of the Provincial and Plenary Councils. These are the only legislative bodies that obtain any recognition from the Holy See. Diocesan synods are very rarely submitted to the judgment of the supreme authority, and in hardly any case are honored by its approval. Legislative authority is recognized in them for the special diocese for which their statutes are framed, but are not in any way a guide for the conduct of others. They very often contain the special standards of right and wrong of an individual whose successor is as likely to eliminate as to endorse them, or at least to let them become dead letters if they are not actually expunged

from the code. This unfortunately is one of the great evils of too much law-making, and of the establishment of too many regulations. They become, in the course of time, a snare to the feet of the governed, and where many laws and regulations are allowed to go into desuetude, the famous epithet of "innocuous" cannot be always applied to them, if their existence on the statute book is used as the crook is used by the shepherd to trip or hold fast some unwary lamb, who in perfect innocence is gambolling too friskily near by, whilst the shepherd is peevish from indigestion or sleeplessness, or from other cause.

Whenever there should be diocesan statutes that conflict with the welfare of souls, or imposing unreasonable burdens upon the clergy, or inimical to the spirit of the general laws and customs of the church it has always been considered to be within the right of the diocesan clergy to offer respectful remonstrance to the bishop, and if he refuses to take their objections into consideration, to have recourse to the Supreme Authority to seek their amendment. There can be no want of respect charged against any subject who appeals to the common superior for a judgment upon the acts of the intermediate authority. Any objection on the part of the latter to admit of such a recourse or appeal, or to submit to a higher authority's decision would make manifest that the law or regulation or decision in question was the offspring of personal views, and not the outcome of the wish to procure the general welfare, from which desire alone arises the value of any regulation or law. The very essence of a law is that it be made for the general welfare ; and no law made otherwise has any binding force in conscience.

Our scope, however, leads us not to pay special attention to diocesan regulations where the supreme sanction is not supposed to be even tacitly given them, even though as a compliment they might be forwarded to the Propaganda. They are not authoritatively submitted and much less authoritatively accepted, though at times a polite note of receipt and a general expression of praise may be given for the pastoral solicitude and wisdom displayed in the holding of a synod.

Our scope leads us to give more special attention to the Provincial and Plenary Councils whose decrees are required to be sent to the Propaganda, which eliminates what it clearly perceives to be opposed to the general spirit of the laws and practices of the Church, as we have seen it do in regard to the improper extension by the first Council of Baltimore of the obligation of the promise of obedience made by the priest to the bishop at ordination. This

first Council of Baltimore of 1829 had before it the difficult task of making the first decrees for the bringing into line with the spirit of the Universal Church the discipline of this missionary country entrusted to its charge. We have seen the bishops state that they only knew of one properly called parish and parish priest in the whole country, and "the happy land" of this privileged one was New Orleans. The fourth decree of this Council plants the germ of the remedy for this want of the full organization which the Holy See has always been most anxious to promote in the Church of the United States as elsewhere.

"As it is repugnant to the laws and custom of the Church and to the good government of souls to grant to several priests together equally the pastoral authority to rule the same church or district, and as great discord and confusion have arisen in this province from the claim of several priests to exercise equally (*ex-aequo*) this pastoral authority without any dependence upon one another, we decree and determine that each prelate must at his earliest convenience designate in the places where there are several priests, one as pastor of each place, to whom one or more assistants may be assigned as will seem advisable to the prelate. In the places moreover in which no such special disposition shall have been made by the prelate, we decree that the priest, who after this decree shall have been deputed by the prelate to fulfill this office, shall be considered the pastor; and the other priests afterwards deputed are to be held as assistants, until otherwise decreed by the prelate!"

The extent of the abuse that had arisen may be surmised from the peremptory fashion of giving no room for the temporizing of any of the bishops that took part in the council, and of passing over their heads to put into execution, the law made by the council.

It is clear that for the proper direction of the Church services, the timely administration of the sacraments, the economical care of the Church temporalities, the peace of the priestly household, one should be held responsible for the good order, lest there should be introduced the Garden-of-Eden fashion of throwing the blame on some one, or two or more, for the omission of proper duties. The enforcement of the pastor's directive authority in what concerns the welfare of the parish and of souls, has been found to work admirably for the people. Yet the bishops did not intend, nor would it be wise, to confer upon the pastors legislative authority to make regulations for the personal direction of the assistant priests, whose duties are sufficiently defined by their

clerical state, their care of souls and the general church and special diocesan laws.

The semi-conventual life led by the priests in the large cities of this country, where pastor and assistants live together in the same house and eat at the same table is a source of edification, and entails a certain reasonable direction on the part of the pastor, if he has found any individual abuse that needs correction for the avoiding of scandal. Yet the attempt to impose peculiar standards of morality, or special forms of priestly devotion would but tend to make men restive, and quickly lead them to resent interference with their personal right. Even if a pastor should take offence at smoking, or should become a strict prohibitionist of any kind of wine, even in moderation for the stomach's sake, or think that his neighbor ought to rise or go to bed at his special hour, and be within doors when the pastor finds it convenient not to be out, the bishops did not and should not attempt to curtail the assistants personal rights, but only to subject them to the control and direction of the pastor, in whatever concerns the welfare and edification of the people, in the promotion of whose spiritual concerns they are called to aid the pastor. The assistant's reputation must become an object of deep concern to the pastor, who is obliged to take no action that would cast unjust reflection upon, or show unkindness to him, especially before the flock. And the Propaganda's serious admonition to the bishops concerned, the assistants as well as pastors, viz: that "they are to be careful not to transfer priests against their will from one place to another without a grievous and reasonable cause."

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## CHAPTER VII.

Relations of assistants to the pastors. Controversies on purely ecclesiastical matter between clerics or religious not to be brought before the civil court. No such restriction imposed for purely secular matters. Rome has made concordats with Catholic governments allowing ecclesiastics to summon and be summoned before the civil courts on secular matters. Rome's wisdom in yielding to the needs of the times.

The determination of the bishops, under guidance of the Propaganda, to gradually enforce the division of the dioceses into various fixed districts with certain limits, or parishes under one responsible rector was manifest in the fourth decree of the first Council of Baltimore of 1829. The enforcement of the authority of the pastor with regard to the administration of the parish, was further developed in the second decree of the fourth Council of Baltimore held in 1840. "Whilst not making any innovation about

the authority of bishops, as explained in the first decree of the first Provincial Council of Baltimore, with regard to the appointment and removal of pastors, and wishing to add strength to the fourth canon in its determination of a single pastor for each congregation, we declare that this pastor alone has the right of administration of the church and congregation, and that it is not lawful for the other priests sent to assist him in the ministry, to undertake anything without his wish." Upon the pastor's shoulders is the serious responsibility of seeing that the part of Christ's flock assigned to his charge, be properly provided with spiritual pastures necessary for their spiritual welfare. Aid is furnished him by other priests however, under his direction. It is his privilege and duty to see that what he cannot do personally, they faithfully perform. The administration of the sacraments of Baptism, Holy Eucharist, Matrimony and Extreme Unction are a part of the assistant's ordinary functions, no less than the instruction of the people—adults or children. Yet the rector is indued with the authority of direction in all these and similar exercises of the ministry in behalf of the people, so that the assistants may not undertake any of them without the approval of the pastor. The bishops wisely omitted the mention of any interference with the mere personal direction of the assistant priests. Yet knowing that there might arise a cause of disagreement from a spirit of greed on the part of either pastors or assistants, the fathers in the third decree enact: "Lest greed should infect the priestly ranks, and discord arise between the priests dwelling together, on account of the offerings customarily made on occasions of the administration of the Sacraments of Baptism and Matrimony, we warn the bishops either in a Diocesan Synod or otherwise, if they should so determine in the Lord, after consultation with the clergy, to fix a just rule of distribution, not omiting a consideration of the heavier burdens and the greater authority of the pastor."

In the third Provincial Council of Baltimore, held in 1837, a partial provision had been made, or rather suggested, for the settlement of controversies among priests or religious persons, by a recourse to the bishop, whose judgment should be mature. This is the wording of the decree:

"As serious scandal is given the faithful, with discredit to the Ecclesiastical body, if Ecclesiastical cases are brought before the civil courts, we exhort all whom it may concern, to amicably settle questions about Ecclesiastical things or persons, or at least to submit them to the bishop's decision. If any Ecclesiastical person or member of a religious body, male or female, should cite an

Ecclesiastic or a religious before a civil court, on a question of a purely Ecclesiastical character, he should know that he falls under the censures decreed by the Canon Law."

In this matter we have a proof of the great experience and wisdom of the Propaganda. The bishops had at first so worded their decree as to lay down that the mere citation of an ecclesiastic or a religious by another such person before a civil court would subject the latter to the penalties of Canon law. The Propaganda, however, reminded the bishops of the serious modifications that are required in the old customs or laws of the Church by the circumstances of modern times, and while hoping and exhorting a settlement of all such controversies either privately or before the bishop's tribunal, the Propaganda would not allow it to be understood that these penalties were to be incurred unless the question were so purely and strictly of an ecclesiastical character as to preclude all right of the civil court to pass judgment on the matter. Questions of money, of the interpretation of wills, of the right and amount of interest, are mainly purely secular and belong to the civil domain and the civil courts, and to-day the Church universally on such and analogous matters permits and sanctions recourse even by ecclesiastics, to the civil tribunals against other ecclesiastics in high or low station, especially where the ecclesiastical courts are unwilling to fairly undertake the consideration of them or are unable to properly enforce their decisions when undertaken. The Holy See wishes in all such cases that the proper precautions be taken to avoid disrespect and to prevent wanton suits from often being brought by ecclesiastics against ecclesiastics, and hence to-day that one ecclesiastic may bring another before a civil court in this country it is necessary to apply to his bishop or superior to obtain if possible a proper settlement. If the bishop neglects or does not wish to try the case, or if it is clear that no settlement made by the bishop could be enforced, the bishop is not at liberty to prevent recourse to the Civil Court. If a priest had a case against a bishop, recourse is now to be had to the Holy See for permission to sue, on account of the greater fear of scandal and the greater precautions to be used to preserve the due respect to the Episcopal order. Yet the Holy See has over and over again recognized that this permission is to be granted for the safeguarding of the temporal rights of the inferior Ecclesiastics, when it is clear that only through a complete knowledge of the civil laws of a country can complete justice be done, and when their interpretation and execution are avowedly not within the domain of the Church. The privileges of the Ecclesiastical

Courts formerly so fully recognized by Civil Governments have now dwindled almost into insignificance, and hence the Church is ordinarily content with enforcing her control only over those things which belong to her by divine right. We see this acceptance of the modifications introduced into modern society in the wording of the Propaganda's emendation of the third Baltimore Council's decree, (Collectio Laccens, Vol. III, page 56.) "With regard to the sixth clause in which there is mention of avoiding the bringing of Ecclesiastical questions before the Civil Courts, the Sacred Congregation decides that the decree should be modified, and if a cleric sues another cleric before a lay judge, especially if he be an heretic, upon a matter of *strict* (the italics are the Propaganda's) Ecclesiastical right, the Council says truly that any one so acting incurs the censures enacted in the law. But in mixed cases where the persons may be Ecclesiastical, but the thing about which there is question may be temporal or of one's household, the Council must deal more leniently, especially in countries in which the Civil Government is not in the hands of Catholics and where unless recourse is had to the Civil Courts there is not the means or the power of enforcing an Ecclesiastical decision for the guardianship or recovery of one's own."

To-day, on account of the gradual process of separation of Church and State even in Catholic countries, we find concordats accepted by the Holy See whereby while strictly ecclesiastical matters, such as concern faith, the sacraments, morals, sacred functions, and the rights connected with the Sacred Ministry are reserved to the ecclesiastical tribunals, it is permitted that the civil cases of clerics and all questions of the property and temporal rights of churches, even benefices and other ecclesiastical foundations be treated before the civil courts. This even in Catholic countries where the privilege of the Ecclesiastical Court (privilegium fori), is recognized! The circumstances of the organization of our country have precluded the possibility even of this privilege ever having a footing here in regard to matters not of strict ecclesiastical right. An instruction of the Propaganda of May 17, 1886, gives us the information that the Sacred Congregation will not accept any appeal or recourse of priests who should bring before lay judges a cleric, whether on an ecclesiastical question or otherwise, without the permission of the bishop or a bishop without the permission of the Holy See unless they first withdraw the suit from the civil court. The bishops are permitted to exact this withdrawal even by the infliction of penalties and censures after trial (ferendæ sententiæ), especially by suspension from the

ministry, with the care to use the proper rules prescribed for such sentences and where the case is serious enough to call for it, as they must decide before God. But if the permission to enter suit be asked of the bishop, he will never refuse permission if the parties have ineffectually attempted a settlement before him.

By a special declaration of the Propaganda of Sept. 6th, the transfer by a cleric of a claim to a layman for the purpose of evading the censures, is checked by the requirement of the consent of the bishop to such transfer if made for the purpose of the suit. Yet the very declaration that a bishop cannot refuse the consent, where he cannot effect a proper settlement, obviates any necessity of an attempt to evade the law, which is couched in terms that really recognize to-day the right of a cleric to cite a cleric before a civil court, in matters not strictly Ecclesiastical whenever this is the only decisive tribunal with the power to enforce its decision.

One of the most prominent canonists to-day in Rome, Canon Menghini, writes on page 28 of his celebrated opinion on Rev. John Carmont's case in Scotland, where the circumstances are similar to ours:

"The permission in question is merely intended to safeguard the respect and reverence due to certain persons, and need be asked only when it can be obtained conveniently, successfully and without prejudice to one's rights. Here at Rome, as elsewhere, it is most readily granted when the contending parties cannot agree among themselves."

We can easily realize that all such prescriptions limiting the liberty acquired in this country by immemorial custom and prescription are to be narrowed to their strictest meaning. Thus a clergyman without the formality of asking such permission might easily sue vgr. the trustees of Calvary Cemetary on a question of a right of burial, or of limits of a plot, even though the Archbishop be a member of the board. In the same way a priest holding a mortgage upon church property need not use such formality of asking such permission to sue for his claim a church corporation even though there should be one or three or more clerical or religious persons as members of the board. The church corporation in our courts has but a civil entity, and it would be false to imagine that any one or more members of it, whoever they may be, can change the entity accepted by the Church, and which subjects it necessarily to the action of the civil authority which gives it being. This acceptance of legal restrictions and privileges is more than equivalent to a concordat, and establishes as the

civil law puts it, a right in the corporation to sue and to be sued, to sue any one against whom there is a legal claim, and to be sued by whomsoever may have a just claim against it.

In all these matters we cannot but admire the knowledge, experience and wisdom of Rome, so slow to place itself in conflict with the civil authorities or the customs of nations anywhere. Tenacious of what belongs to the Church by divine right, as essential to its being, the Holy See has known how to exercise many temporal added rights when entrusted to her by the confidence of the people, and at other times to drop their exercise or to lay them aside, if found conflicting with or hampering in any substantial way, the direct purpose of her existence which is the salvation of souls. Where she recognizes her inability by her own direct action to protect the rights of her own direct representatives in the clerical order, she does not hesitate to allow them the use of the civil protection of the governments, whose laws they are bound to obey and abide by when they do not come in conflict with the divine rights of the Church and the law of God.

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## CHAPTER VIII.

The first plenary Council of Baltimore in 1852 gives its attention to the status of priests. The second plenary Council urges the formation of parishes. Parochial rights in great measure conceded. The rector must be consulted before the division of a mission.

The first provincial Councils of Baltimore were attended by the bishops of the dioceses throughout the United States on this side of the Rocky Mountains, which formed one Ecclesiastical Province, of which the Archbishop of Baltimore was the Metropolitan.

At the convocation of the seventh in 1849, there appeared as the Metropolitan of the new ecclesiastical province of St. Louis, the veteran Archbishop, Peter Richard Kenrick, who still holds firmly this authority, though several new provinces have since been formed of part of the territory that was subject to his direction at that time.

The first Plenary Council of Baltimore was held in 1852. This title of Plenary Council indicates that all the bishops of the several ecclesiastical provinces of the Church in the United States, were gathered in the council, but now no longer under the usual direction of a Metropolitan, but under a Delegate Apostolic. The See, or Diocese of Baltimore, having been the first Episcopal See created

in the order of time in the original thirteen States of the Union, was honored by the Holy See with a right of precedence or primacy of honor among all the bishoprics or archbishoprics of the whole country. This privilege did not confer any right of jurisdiction, or attach to the See of Baltimore, even by courtesy, the right of being the channel through which the call to the bishops to assemble in Plenary Council should be communicated. This call could only be effective through a special delegation from the Holy See, which is free to make its own choice of a delegate, even to send as its representative one not belonging to the United States. The Council may be convened anywhere deemed proper by the delegate. The first Plenary Council began its work by renewing and accepting all the acts of the seven preceding provincial councils of Baltimore ; hence all the legislation that we have heretofore considered was ratified and is held to be in force except where expressly modified by subsequent plenary councils. No provincial council can recall the legislation of a plenary council, which derives its higher authority from the delegation, and much more from the modifications and the ratifications of the Holy See, given in a much more direct and authoritative form than is accorded even to provincial councils.

We find the first plenary council of 1852 giving direct consideration to the status of priests of the United States. The tenth decree lays down that "it is very expedient that the ordinaries designate ecclesiastical districts with defined limits, as also rules about the jurisdiction and privileges of priests as soon as possible. The bishops, however, can change these districts, and it is theirs to decide to which churches, and to which priests the various positions are to be assigned." However in the sixth decree the bishops are exhorted "to choose priests whose age, knowledge, excellent life and administrative ability commend them as consultors whose judgment they will seek, when needful. A praiseworthy custom of some dioceses is highly commended, of having a fixed day every month for these consultors to meet for the discussion of matters connected with the diocese," and in the fifteenth decree they lay down the important recommendation "that each year the bishop himself, or through a priest appointed for the purpose, shall call for an account of the temporalities of the church from the administrators, be they lay or clerical." The division of the dioceses as far as possible into settled and defined districts or parishes, was very emphatically prescribed in the second plenary council of Baltimore, held in 1866. The name mission attributed even to these districts to-day, does not in any way exclude the

idea of a truly constituted parish. The word mission is used because more generic, and is applicable either to a parish with the exactly defined territory with fixed limits or to undefined territory, oftentimes a series of scattered villages, even hamlets, perhaps in several counties, to which the bishops could not easily give exact boundaries. Hence the Second Plenary Council, while wishing the establishment of parishes, took care not to make its decree too exacting. The 124th decree is quite positive, however.

"We therefore wish that throughout all of these provinces, especially in the larger towns, where there are several churches, that certain districts as parishes be assigned to each church with clearly defined limits; and that to the rector there be given parochial rights."

Canon De Angelis, who in his work on Canon Law (Tom I, part 2d, Lib. 1, tit. XXVIII, pp. 52-53) makes special reference to the status of parishes in the United States, writes: "A parish is a determined church of a diocese designated by a bishop which has a population within distinct and circumscribed limits, to which a priest as rector by virtue of his office and to the exclusion of others administers the Sacraments, the word of God and other spiritual things. Whenever, therefore, a bishop has appointed a special church and assigned to it a population within certain circumscribed limits and appointed one designated rector, then, by virtue of the 13th chapter of the Council of Trent, there is the canonical erection of a parish. This is a matter entirely within the competency of the bishops, especially in the first establishment and partition, and is their duty as is clear from the quoted chapter of the Council of Trent; no other solemnity is required for the making of this partition."

Once parishes have been formed in accord with the Canon Law of the Church, they cannot be altered except by the process of the same law, for as Canon De Angelis remarks (on page 54 as above), "The Canons require a reasonable stability."

The parishes in the United States, wherever the requirement of the council was carried out, as it actually was in almost all the larger towns, have been established by virtue of legislation of the most competent authority that of a Plenary Council of the bishops of the United States, sanctioned by the Holy See. These districts having fixed limits are under one appointed rector who has received parochial or quasi parochial rights. Parochial rights, as laid down by Canon Law, are to baptize, to marry, to administer to the sick the Holy Eucharist and Extreme Unction within the limits of a parish. The funeral services in the church and at the

cemetery form part of these rights, where circumstances have not required one or more central burial places. Also a parochial right is that of maintenance by the parishioners. And finally there is the parochial right of preventing an infringement of the limits of the parish. To these rights it of course is needless here to remark that there are attached very onerous duties. Lest there should be any misconception, it is also well to state at once that even where a canonical parish has been established, and parochial or quasi parochial rights conceded, it does not necessarily follow that the right of irremovability is granted to the rector. In fact, the Second Plenary Council, with the assent tacit at least of the Holy See, excluded the canonical right of strictly called irremovability from those attributed to the rectors of these parishes. Already something has been said to indicate what extent of permanence may justly attach to the appointment to a rectorship of any parish. A clearer statement may be of interest after a further consideration of one of the canonical effects that result from the establishment of a parish. The rector, whether removable or not, becomes the guardian of the spiritual and temporal interests of the parish in subordination to the authority of the bishop. He has to guard these interests from unjust aggression from any source; he is obliged to seek by all due diligence to hold fast his people's rights. The bishop has from Canon Law the right of establishing and even dividing established parishes; but a part of the process required of the bishop in taking such action is a serious consultation with the representatives of the parishes whose interests are involved. With our rapidly increasing and changing populations these alterations are much more needed, and the serious reasons for the changes are much more frequent than in the more settled communities of the Old World. Even here, however, the rectors of parishes from which portions are to be taken for the formation of a new parochial district, are entitled to have their views taken into serious consideration, and their objections carefully weighed before the dismemberment of any part of their parish is made. The Third Plenary Council of 1884 has explicitly (in chap. 2d, par. 20), decreed that the rector of a mission of which the dismemberment is suggested by the bishop to the consultors of the diocese is to be heard before it is determined upon. The reasonableness of this provision is very apparent, since no one is better calculated to point out any evils consequent upon the proposed partition, than he who is familiar with the ground. Even if his objections turn out not to be deemed of sufficient weight, now that he knows that his reasons are to be sub-

mitted to the authoritative examination of the consultors required by the law, he will the more readily acquiesce in the final decision of the bishop who has been aided by the conscientious advice of impartial men. Yet even then if he attaches such serious importance to the matter, that he thinks that it requires further consideration, any aggrieved party has a right of appeal to the higher authority. Yet the Church has provided that in a question that involves so directly the immediate welfare of souls to be provided for by the proper administration of the sacraments and of the word of God, the bishop who has followed the proper process of the law may proceed with the establishment of the new parish, subjecting himself to the risk of making due indemnity for any injury done to the aggrieved party, if the higher authority, which in this case is the Holy See, reverses his decision.

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## CHAPTER IX.

Canonical parishes erected in the United States. Irremovable rectors. Their number not to be inconsiderately increased beyond one in ten. The Roman instructions favor an enlargement of this number. Competitive examination requisite for the obtaining a parish. The bishop must select the worthiest of those found to be fit by the Synodal Examiners. An appeal from the bishop's selection lawful.

The erection of a canonical parish does not necessarily carry with it the strict canonical right of irremovability on the part of its rector. The Council of Trent's enactment, which the second Plenary Council of Baltimore had in view when it decreed that districts should be set apart as parishes in the larger towns of the United States, made special provision for exceptional cases. The decree of the Council of Trent (Sess. XXIV. De. Ref. chap, 13) reads :

"In those cities and places where the parish churches have not any certain boundaries, neither have the rectors thereof their own proper people to govern, but administer the sacraments to all indiscriminately who desire them, the Holy Synod enjoins on bishops that for the greater security of the salvation of souls committed to their charge, having divided the people into fixed and proper parishes, they shall assign to each parish its own perpetual and peculiar parish priest, who may know his own parishioners and from whom alone they may licitly receive the sacraments, or the bishops shall make such other provision as may be more beneficial, according as the character of the place may require. They shall take care that the same be done as soon as possible in those

cities and places where there are no parish churches, privileges and customs, even though immemorial, to the contrary notwithstanding."

The bishops of the second Plenary Council availed themselves of the special privilege granted them by the Council of Trent, even though they thought that the time had come to carry out without further delay the provisions of the law that affected the people themselves. Hence after decreeing in par. 124 that throughout all the ecclesiastical provinces of the country these parishes should be created, and their rectors endowed with parochial or quasi parochial rights, they add at once : "By the use of words parochial right, parish and parish priest, we do not purpose to convey to the rector of each church the so-called right of *irremovability*, or in any way to lessen the power which from the accepted practice in these provinces the bishop has of depriving a priest of his office or of transferring him elsewhere. We however warn and exhort bishops not to avail themselves of their power except for serious reasons, and ever keeping in view the various deserts."

The Fathers of the Plenary Council did not wish to hurry in the conferring of any privileges upon priests ; they yet had in par. 123 expressed the wish to conform as far as circumstances permitted, to the universal legislation of the Church as reflected in the above chapter 13th of the Council of Trent. In par. 125, wishing to note in what matter they would refrain from accepting in its fullness, the applicability to our circumstances of the Trentine decree, they call attention to their having wished to grant the other parochial or quasi parochial rights, but not the strict right of irremovability on the part of the rector.

There is a familiar illustration of the existence of a canonical parish without the canonical right of irremovability of the rector in all parishes under the control and supervision of any regular Order, where the rector's removal is subject to the wish of the superior of the Order, even without the necessity of consultation with the bishop.

The districts set apart as parishes in the towns of the United States in accord with the decree of the Second Plenary Council had all the characteristics required by Canon Law, in canonically erected parishes. To-day the Third Plenary Council of 1884 has made provision for endowing the rectors of a certain number among these parishes with several of the substantial canonical rights, of which all were left shorn by the earlier legislation. The bishops were instructed to select, after taking the advice of their consultors, these parishes whose rectors should be enriched by the

right of irremovability or strictly canonical permanence. The conditions appointed as necessary requisites for this selection were that these parishes should have a respectable church, a school for boys and girls, a proper rectory or pastoral residence, and that the income or reliable revenues of the parish should be sufficient to meet without great difficulty the expenses of the rectors and the church's maintenance, as also the support of the school.

The first appointment of these irremovable, or canonically permanent rectors, is left to the bishops, whose conscience or judgment before God is made responsible for the selection of those whom they decide to be the more worthy and fitted for the honor. The number of these irremovable rectors is for the present determined by the proportion of one to every ten of the missionary rectors in a diocese. This proportion is of strict obligation in the sense that one at least in ten should be made irremovable. The limitation on the other side is clearly not of the same strictness, as it is laid down merely that within the twenty years following the council that proportion should not be inconsiderately exceeded. If in any special province of the country, the bishops should deem it wise to extend the proportion, or even if a bishop should by advice of his consultors, and especially with the further co-operation of his clergy gathered in a diocesan synod, come to the mature conclusion that a greater number of such appointments would be more conducive to the welfare of the diocese, there is nothing in the wording of the decree to discountenance it. There is in it but a serious caution against hasty, inconsiderate action. It is notoriously within the spirit of the legislation highly recommended by the Propaganda, to enlarge the number of these canonically irremovable rectors. The caution of our own bishops prompted them in new local legislation to discountenance as great a multiplication of these privileged rectors as the Propaganda instructions seemed to encourage. One at least of every ten was recommended by the Propaganda. One in ten is now prescribed, but this proportion while not necessarily fixed must not be hastily or inconsiderately exceeded.

Certain qualifications are required on the part of the rectors to be endowed with this privilege. They must have given evidence of their ability to administer to the temporal and spiritual affairs of a parish, and the period of ten years in the exercise of the ministry is required as a necessary groundwork for these proofs and evidences of administrative ability. For the successorship of these first appointees by the bishop, a serious competitive examination in the various kinds of theological lore required by

a parish priest will be necessary in presence of certain examiners called Synodal Examiners because ordinarily appointed by the bishop as satisfactory to and approved by the clergy gathered in diocesan synod. There rests upon the bishop the obligation of selecting the more worthy one of those examined, so much so that if any one should feel seriously aggrieved at being passed over, while he knew that his examination was easily the most brilliant of all, and the other requirements of administrative ability and moral conduct are clearly present, the law gives him the right of appeal from the supposed partiality of the bishop.

This examination extends to moral, dogmatic and liturgical theology as also to canon law and to the method of popular instruction of the people in the Christian doctrine. There is a consideration of all the various qualifications required in a pastor of souls, and the various offices and experiences of the examined are thoroughly weighed by the Examiners, of whom at least three are required to be present along with the bishop or his Vicar-general. Neither of the latter has any voice in determining the result of the examination. The Synodal Examiners alone determine which of the examined have the requisite qualifications and are therefore fitted for the vacant place; and the bishop is bound in conscience before God to select the one who has clearly given the best evidence of fitness, and who is the most worthy of all who stood the examination. A vote is in the matter of examination allowed to the bishop or vicar-general, whenever there should be a tie, or each examiner should differ from the other.

The absence of this competitive examination as required by the Council of Trent and explained by Benedict XIV for the selection of a canonical parish priest was in great measure the motive of denying, in 1866, this right of irremovability. This examination once undergone gives an implicit right of contract and strict justice to the successful candidate to enjoy its fruit till circumstances should warrant the canonical method for removal. A kind of examination was suggested, but I believe nowhere adopted or even put into any repeated practice. In par. 126 the Fathers of the Second Plenary Council stated that the circumstances of our country would not at that time permit the carrying out the wise provisions of the Council of Trent for a thorough examination as a preliminary to the selection of canonical parish priests, even where there should be any. The difficulty was probably twofold; on one side the required number of examiners was hard to find and bring together, and on the other the rapid increase of Catholics in this country and the need of rectors to push forward the

material development to meet the preliminary wants of the people were found sufficient excuses for putting aside the mild suggestion made at that time as a substitute for the Trentine Competitive examination. The Fathers "thought that no one should be placed over a parish church without undergoing an examination before the bishop and two priests appointed by the bishop, nor should any one be admitted to this examination who had not exercised the sacred ministry for five years in the diocese where the parish was situated."

The competitive examination is not an essential requirement for acquiring either the position of parish priest or the privilege of canonical permanency, called irremovability. Thus we find in one case the first appointment left to the deliberate determination of the bishop. Thus also in the case of patrimonial presentations in Catholic countries to a parish, notwithstanding the plain requirements of the Council of Trent, the custom has done away with the obligation of a competitive examination, if the candidate presented is found to be fit by the bishop of the diocese.

We find also that even in the matter of this competitive examination as required for the obtaining of one of these parishes to which the right of irremovability is attached to the rector's position, a variance has been permitted where deemed opportune and necessary from the form laid down by the Council of Trent.

The Trentine Law would demand that this competitive examination should be held directly for each local vacancy, as it occurred ; but a privilege has been granted for dioceses of great extension, or wherever serious difficulties should be in the way of priests assembling there and then for a special vacancy, that the examination in the matter of theological learning might be kept separate from the investigation into the other needful qualifications. Hence it is permitted that once a year a general examination may be had of all those whose learning would be likely to be adequate for the position, and the declaration of fitness which would result therefrom, would have effect for five years as sufficient proof of the required ability in the theological department. Even then, however, the fitness of the various candidates in the other requisites is still subjected immediately before the filling of any vacancy to the judgment of the Synodal Examiners appointed for the purpose, while to the bishop is left the decision of which is the most worthy among the candidates, whose rights are secured always by the canonical right of appeal if they should feel reasonably aggrieved. On appeal the evidences of their examinations are submitted to the higher authority, while the

bishop has the right and the obligation to make known to the appellate authority any good reasons, public or private, which may have induced him to put aside one who may have given the most brilliant proofs of his knowledge in the theories and practices of the position.

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## CHAPTER X.

All missionary rectors are permanent in office and not to be changed without a serious cause. Irremovable rectors are subject to removal, if found by the specified trial to be permanently harmful to the parish. The special causes for removal in the United States specified.

The irremovability or canonical permanence granted to a specified number of rectors of parishes in this country is a great advance in security of tenure for them over the state of missionary rectors, which is the title of the rectors of all other parishes or missionary districts. The gist of the difference is found in this that a serious administrative cause or deemed such by the bishop, where there is no circumstance pointing to the change as a punishment for moral delinquency, may authorize a bishop to transfer the ordinary missionary rector from the charge of one parish to that of another, without any special form of law. There has been no legislation on the part of any Plenary Council nor, as far I can see, on the part of Rome to interfere with this power of the bishops with regard to the missionary rectors. Both the Plenary Councils and the Propaganda have time and again warned the bishops not to exercise such a power without the certainty of a serious reason, and to be sure to keep before their eyes the services and deserts of those transferred, lest injustice be done them. The Third Plenary Council renews the admonition of the second by repeating its words: "We warn and exhort bishops not to make use of this power except for serious reasons and keeping in view the various deserts." In its supplement to its instruction of 1878 the Propaganda gave the distinct rule according to which bishops are expected to deal with all priests: "The bishops should be careful not to transfer priests against their will from one place to another without a serious and reasonable cause."

A special clause was added that if any crime were charged against a missionary rector, he should not be subjected to final deposition from his charge of rector without the form of trial prescribed in the law. This did not, in my opinion, prevent a bishop for serious administrative reasons which should not in any way

involve or suppose criminality of any kind, from transferring a missionary rector to another charge of practically equivalent standing. If any one be sent from an honorable place to one clearly lower, the impression upon the people would be that there was some guilt, and hence if the one so treated should in his consciousness of innocence demand an investigation or trial, both natural equity and the law concede it to him, and the change must not be made if it really does create such suspicion, if he is not proved guilty. He has the certain right to his good name, which no one has the right to take from him or to put in jeopardy till he is shown to have forfeited it. There is nothing in the Third Plenary Council to change the standing of ordinary missionary rectors. They were in the technical language of the law "movable at will," and are so still; but we have seen how natural equity and the Plenary Councils and the Propaganda have interpreted that this "will" must be determined by serious motives and be guided by anxious care to save the good name of any one affected by the removal. As the deposition from the charge of a missionary rector to the position of an assistant or of a chaplain or the like against his will, must almost necessarily be construed into a punishment for some guilt, the law, which is made in view of what ordinarily happens, insists upon the form of trial in vogue if the one so dealt with demands it. This is certain if any public suspicion of wrongdoing is aroused by the transfer. Not a word is found in the Third Plenary Council nor in any published or properly known Roman instruction to do away with the principle involved in the express prescription of the Propaganda in 1879. Any change in the form of trial, leaves intact the principle that such a deposition, if it implies guilt in the deposed one, must not be definitely carried out without a trial in the old form, where it is still tolerated or in the new which may have superseded the former one.

On the other hand, the newly granted irremovability to some of the rectors is not of an unlimited extent. It might turn out to be a curse both to the rectors and to the people. This irremovability is not of such a character as to necessarily fix a rector in a parish in such a way that he may not have any chance of a transfer to another, if he should earnestly seek it. There is nothing in the law to prevent an irremovable rector from seeking another parish, whether its rector were irremovable or not. The irremovability follows the parish and if he were to become rector of a parish to which the privilege is not attached, he loses his privilege of irremovability. As long as there is such a disproportion as one in ten between the "movables" and "irremovables," it is very

likely that many of the most experienced of the movables will not renounce their technically "movable" position for some of the parishes designated as irremovable, and some rectors of the latter may think that their privileges are too costly. No one can be compelled to labor and toil for a privilege which he may not appreciate very highly. There are not a few good men to whom fixity of tenure, that ties them down too closely, becomes more irksome than all the variety and changes to which the greatest caprice might subject them. There is a great variety of characters among priests. Some need the stimulus of change to keep up their spirits, not to say their flagging zeal; and hence very wisely the law permits for serious reasons the transfers and only discountenances them when made against their will. But the transfer or deposition or permanent material diminution of authority of the irremovable rector is not allowed at any time, for however good reason, administrative or otherwise, against the rector's wish without the form of trial prescribed by the law. To-day the form prescribed since 1884 by the Propaganda for the United States is substantially identical with that which to-day is followed in Italy and France, and in this we are ahead of England which still has the form of a judicial "commission of investigation," laid down for the English bishops as early as 1852, which was extended with some modifications to the United States in 1878, but which here has now been superseded by the new form.

It is necessary for the welfare of the people that no rector, in fact no superior of even the higher grades should have a fixity of tenure or irremovability that would seriously conflict with the good of the souls, of whom the care has been assigned him. Hence Canon law provides that any one having this canonical irremovability especially when connected with the care of souls, may be deprived of it on account of certain specified delinquencies mentioned in the law. The Third Plenary Council states very clearly that all serious misdeeds involving a serious breach of ecclesiastical discipline and notably jeopardising the temporal or spiritual rights of the mission, if brought home to the rector in proper trial, are sufficient and ample motives for his deposition from the charge of a parish to which irremovability is attached. The bishops, with the sanction of the Holy See, have specified a certain number of these misdeeds, which they deemed especially requiring such removal in this country.

The first is an obstinate disobedience in a matter of great importance to the rules established by the bishop for the temporal

administration of the mission or for the carrying of the temporal burdens of the diocese.

The second is an open refusal, after repeated warnings, to obey the bishop's commands with regard to the support of Catholic schools to their great detriment, or to erect those which the bishop after mature consideration and due weighing of the resources of the mission declares to be within its power and obligation.

The third is the rash and after due warning the repeated assumption of debt for the church or parish or for the priest himself without permission of the bishop; or a clearly wilful disobedience in the matter of not paying the debts already assumed.

The fourth is a collusion with the lay trustees to give a false note of indebtedness to the rector.

The fifth is a wilful deceiving of the bishop by a deliberate false statement in the annual account of the temporal or spiritual condition of the parish in a matter of such importance as to be likely to involve the parish in serious damage.

The sixth is a public and lasting defamation in the matter of sacerdotal purity, entailing a serious loss to souls.

The seventh and last cause mentioned for this removal by the Plenary Council is one that is suggested by the material work that is constantly required in the United States by the universal increase and development of every part of the country. Hence it was provided that if one who has become an irremovable rector should afterwards even without any fault of his turn out or be found to be totally, notoriously and permanently unfit for the administration of the parish, he should if possible be persuaded to resign. If the resources of the parish should permit the remedy suggested by Canon Law of appointing a vicar with a proper salary, one should be appointed to supervise the department where the necessary fitness is seriously lacking. Yet if the resources of the parish should not allow of the double appointment, the bishop is permitted to take the legal steps to demonstrate this complete incapacity, and if it is shown he may proceed to remove a rector who is unreasonably unwilling. However, in either case, whether the resignation or removal has been voluntary or forced, the bishop must see that a suitable pension, deemed adequate by the bishop's consultors, be given for his maintenance, and also that the title of Honorary Rector be given him.

The whole system of ecclesiastical government is so thoroughly arranged, that it is most certainly found that the more this express and legally guarded fixity of tenure is extended, the more devoted the rectors are to the material and spiritual inter-

ests of their parishes. Hence the church general legislation is always pointed in the direction of the rational stability of all appointments, whilst in those that are connected with the care of souls, the canons breathe a positive dislike and repugnance to capricious changes. In all cases nothing is left to the sole judgment of any one superior. Ordinarily there is a definite way of appeal to a recognized higher court from any judicial unfairness. Certain well defined forms of procedure are laid down, the substantial omission or violation of which alone is sufficient reason for putting aside the decision of the lower authority. In all cases there is always open a recourse or extra judicial appeal against any grievance inflicted by any superior whatsoever; and if the superior's action is not found to be in accord with the law or with equity, the higher authority is obliged in consequence to reverse it and bring the proper remedy for the grievance inflicted. And this recourse or appeal, judicial or extra judicial, can never, if properly brought, be interpreted as a want of respect for any church authority; rather it is a thorough recognition of the great truth that the church wishes our reasonable homage to her teachings and a rational obedience to her commands, and that the higher we go towards the supreme rulers in the church, the more confidence we have in their love of the right, and in their following of the equities of the Eternal Law, to which all men however endowed with power are forever subject.

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## CHAPTER XI.

No one should ever be condemned unheard. Any one accused has a right to aid of counsel. Various forms of trial of priests in the United States. Today every cleric accused has a right to a trial before chastisement can be inflicted.

In every diocese the ordinary judge in ecclesiastical cases is the bishop, whose control extends both to cases of delinquents upon whom correction or chastisement is to be inflicted, and to the settling of differences that may arise between ecclesiastics or clerics in matters strictly ecclesiastical, or in Catholic countries wherever the full and anciently acknowledged privileges of the Ecclesiastical Court are recognized, to any case wherein an ecclesiastic is involved.

The purpose now in view is to consider the bishop's relation to clerics, and especially to priests, whenever there is a complaint against them for breach of the law, which is under his guardian-

ship. No one should ever be condemned unheard. Natural equity and justice which bind the highest ecclesiastical no less than the highest civil rulers require that every one shall have a chance to exculpate himself, if accused, before any sentence of condemnation be passed upon him. The Church has always thoroughly recognized this principle, and no heed need in conscience be ever given to any action that is at variance with it. In a matter of such vital importance the Church has always laid stress upon the substantial observance of certain forms in any trial, and doubly so where there is a question of inflicting serious chastisement upon any one for alleged delinquency. It must be properly proved that the alleged action be really a delinquency in the eyes of the law; then that the accused deliberately and with malice did what has been proved to be a delinqueney and is directly charged against him. His explanations are to be heard before sentence is passed. He has invariably a right to the aid of counsel to defend him. Any judge who, in a trial, should oppose the right of an accused to the aid of counsel, shows that he is wanting in the first principle of justice. Nearest to him in this lack of natural equity is the judge who considers it a personal grievance if any lawyer is prepared to undertake the defense of the accused. There is no need of any statute to allow counsel. The church always recognizes this as an immediate outcome of the natural equities which can never be put aside, and must always be taken for granted. The Church provided also that the bishop though judge be never left alone in a matter that concerns the rights of a third party, and, above all in the matter of reputation, which to honorable men is oftentimes as dear as life itself. Hence, It requires a thorough sifting process, made by others besides the bishop, of the charges, even before they are formally brought against any one.

A sketch of the various procedures designed for use in the United States will have the advantage of keeping our interest alive in the elucidation of a theme suited to make known justice and peace as always hand-in-hand, or rather in eternal embrace.

The first formal attempt to call legislative attention in the United States to the established forms for the serious chastisement of any priest, such as is always the privation of the exercise of his sacerdotal powers, appears in the Provincial Council of St. Louis, held in 1855, under the presidency of the Metropolitan, Archbishop Peter Richard Kenrick.

The Provincial Council of St. Louis could have no authority of itself in the other provinces of the United States but when this decree was, in accord with the rule, laid down for provincial

councils, submitted to the Propaganda for revision and emendation, the Propaganda required certain important modifications to bring it in accord wiih the legislation of the Universal Church, and then instructed the Metropolitan to send the decree so modified to the other Metropolitans of the country with the expressed desire of the Propaganda that it should be adopted in their provinces also. This was formally done by all the bishops when assembled in the second Plenary Council of Baltimore, in 1866 (No. 77), which made its own this amended and modified decree, and declared it to be the law for the Church in the United States, adding a recommendation that "Judges of Causes" should be permanently established by the bishops. It reads as follows :

"Priests to whom the exercise of the sacred ministry may have been forbidden by sentence of the Ordinary have no right to ask support from him, as through their own fault they have rendered themselves unfit to work upon the missions However, that all causes of complaint may be taken away, the Fathers deem it proper that the Ordinaries in all cases of delinquencies of clerics or priests follow a determined form of trial, that may conform closely to the requirements of the Council of Trent prescribed for the Visitation of the Chapter, viz :

"That the bishop or his vicar-general, with authority from the bishop should choose two of the bishop's consultors, of those appointed in accord with the decree of the earlier Council of Baltimore for the treatment of the important affairs of a diocese, nor should he always choose the same two ; and they are to assist the bishop when he is to sit in the trial of a priest charged with a delinquency, and the bishop's notary must also be there. The two deputies shall, however, have but one vote ; but either of them may give his vote in unison with the bishop. But if both shall differ from the bishop or his vicar he shall from the aforesaid consultors choose a third, and the case will be decided in accord with the opinion enunciated by this third one. If it should happen that all three consultors chosen by the Ordinary should differ from his opinion, then the case should be referred to the Metropolitan, to whom will be given a formal document properly sealed and authenticated by the proper signatures stating the whole case as presented in the lower court ; he will inquire into the reasons of the divergent opinions, and give his decision. If the trial should be of one who is a subject of the Metropolitan, who may be charged with a delinquency, and the three assessors (assistants) of the Metropolitan appointed as above should differ from his opinion, the appeal should be taken to the senior bishop

of the province, whose decision will settle the matter, with due regard however to the privileges and authority of the Holy See."

For to the Holy See there is always the right of recourse and appeal; its authority and decision alone can be considered as giving a really final settlement of any question either of discipline, of morals or of faith. I am not aware of any cases that were ever settled in accord with this decree. In the Eastern (and probably in the other) provinces of the country it never took the definite practical shape of the appointment of permanent delegate judges.

An Instruction of the Propaganda was issued in July, 1878, which positively prescribed "the procedure to be followed by the bishops of the United States of North America in examining and deciding criminal and disciplinary causes of clerics."

It is well to remark that the above quoted decree of the Second Plenary Council of Baltimore, as well as the Propaganda Instruction of 1878, were framed not merely for the trial of missionary rectors, nor are they confined to priests' cases. Both also mention the causes of clerics, indicating that all clerics who are charged with delinquency have a right to a trial before the Ecclesiastical Court before serious chastisement is inflicted upon them. This Instruction of the Propaganda did not contemplate the establishment of a court in each diocese in which all matters pertaining to the clergy were to be tried and adjudged, or where the complaints of one cleric against another were to be sifted and decided, and much less where the grievances that a priest might have against his bishop were to be weighed. This Instruction was given to the bishops by the Holy See to fix their mode of action in dealing with clerics who were charged with crime or any misdeed that should require disciplining or chastisement of a serious nature. Its object was to have carried out certain forms, the observance of which should give the proper opportunity to the innocent to make known their innocence, lest they should be improperly subjected to punishment, and on the other hand to keep the proper record and proofs of guilt; so that the neglect of the proper forms should not be used by the guilty, as a means of escape from the proper correction and chastisement.

There was no attempt made in this instruction, as was clearly afterward made known in a supplement in 1879, to legislate about or alter the character of the missions as defined in No. 125, or to weaken or change the juridicial effects mentioned in Nos. 77 or 108 of the decrees of the Second Plenary Council of Baltimore, of the removal from office of missionary rectors. In other words,

these rectors were not made canonically irremovable, and when deprived juridically of the exercise of their ministry, they could not claim from the bishop a right to maintenance, from the obtaining of which they had debarred themselves by fault of theirs proven in a proper trial. The instruction, however, clearly presupposes that natural equity recognized fully by the Church always secures to priests, in fact to all clerics, viz.: the right to be protected in their person, their honor and their temporal and spiritual endowmeuts from all caprice or whim, and much more from personal dislikes, prejudice or hatred. Clerics are with a distinct purpose mentioned by the Propaganda's Instructions, and the form of trial for a delinquency is laid down for all who belong to the clerical state. This right is not extended only to priests, nor only to those who are in sacred or major orders, but to all clerics, and therefore to those who have received the sacred tonsure upwards through all the minor and major grades to their complement in the priesthood. Undoubtedly the right is intensified for those who by positive law of the Church are cut off from the secular state, viz.: subdeacons and all belonging to the higher grades. Any one who has received the sacred tonsure has thereby been admitted by the proper ecclesiastical authority into the ecclesiastical state, because he has undertaken to consider the portion of the Lord as his inheritance, and has started out with the intention of going forward to administer at the Lord's altar as far as he will be found worthy. At no time can he be deprived of any of the rights which he may justly have acquired, unless guilty of serious delinquency, and therefore not without a proper hearing of his case, and the form of this hearing was provided by the Roman Instruction for any cleric as well as for a priest. Subdeaconship, however, is of such a character as to cut off the ordained from the secular state for life, and in the United States the preliminary of the reception of this first of the major or sacred orders is the acceptance of the title of the mission, which derives its force from the oath taken by him to devote himself in a special diocese or vicariate apostolic to the care of souls, whence there devolves upon that diocese or vicariate the obligation of providing him with the necessary means of subsistence as long as it is not juridically proven that he is unworthy of exercising the sacred ministry.

So much importance is attached by the Propaganda to the bilateral character of this obligation, that in the Pontifical Colleges under its direction It prohibits the dismissal of an alumnus or one who has taken the missionary oath, even though at times not a

cleric, from the college under any pretence, without a written authorization from the Cardinal protector, who is one of the Cardinals of the Propaganda, if the college be located anywhere in Italy, or without a similar written authorization from the Apostolic Nuncio, if the college be out of Italy. This is a very clear proof of the equity which is intended should underlie all church dealings with all who have in any way bound themselves to her service. This same principle of a thorough investigation, before the punishment, of all charges made against any cleric, and above all therefore against any one who has attained the vested rights of Sacred Orders is always obligatory upon the rulers of the Church.

The Roman Instruction of 1878 laid down an excellent way of ascertaining the truth of any charges made against priests or other clerics. This was the appointment of five, or where so many could not be had, at least three of the most upright priests who should also, if possible, be experts in canon law, whose business it should be to thoroughly sift the proofs and the testimonies in favor or against the accused; no action to be taken if there were not solid grounds for the charges. This concerned all clerics or priests. More particular and detailed attention were naturally to be given where a rector was to be removed from his position of rector; as any such removal in the eyes of the public would attract very great notice and would naturally be deemed to presuppose some serious misdeed or delinquency. The option was always to be afforded the rector of resigning his position rather than go through the ordeal of a trial. The cause therefore that prompted the bishop to remove him was to be clearly set before him to allow him to decide whether he should resign or not. If he should determine to stand trial, the bishop was to appoint his vicar-general or another priest to make out the charges in writing, with the statement of whatever inquiries had been made and of the circumstances that led up to the trial.

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## CHAPTER XII.

The Propaganda instruction of 1878 called for by the complaints of the clergy that no trial was offered them when chastisement was inflicted. Counsel must be admitted in any trial. Any priest in good standing may act as counsel. The "Commission of Investigation" superseded by the regular episcopal court by Instruction of 1884.

The special attention required by the Propaganda Instruction of 1878 to the case of a missionary rector whose deposition from his office might be aimed at through the bringing of charges

against him was founded on the fact of such deposition bringing a very severe and permanent disgrace upon the accused. It may be assumed as a certainty that such deposition, involving disgrace, will never be allowed by the law without a formal trial. Yet the infliction of any serious punishment upon any cleric, and much more upon a priest required, in accord with this Roman Instruction, the substantial observance of the same form of trial. Before this trial was begun five, or where so many could not be had, at least three upright priests, versed in canon law, were to investigate whether there was ground for such action, they were to investigate the facts alleged against the cleric or priest, examine through their chairman the witnesses for and against, give a full hearing to the accused in his own behalf; and then they were to determine whether anything further was to be done. It was only in case the majority of the Investigating Commission decided that there was sufficient evidence of the alleged charges that any further step should be taken. Their office gave to the Commission of Investigation a strictly judicial character, their investigation being directed to aid the bishop in giving his final decision. Then it was laid down that the decision of a majority of the Commission that there was sufficient ground work for the charges, was necessary to allow further action upon the part of the bishop. If they were persuaded that there was sufficient foundation for the charges, they were to proceed till they were morally certain of their truth. Even then they were not to come to any conclusion before putting in writing and separately the grounds on which their distinct and separate opinion was formed; and only then were they to compare notes and to weigh each other's arguments for a conviction ; the opinions kept distinct and separate with their variety of grounds and motives were to be a part of the acts which were to be submitted to the bishop for his final decision. The bishop's decision to be lawful must be shown to be founded on the acts and the evidence that appears in the acts; otherwise it would be null.

It seems incredible that anybody should suspect that counsel might be refused to the accused in any trial, and much more where punishment is to be inflicted. It can hardly be believed that any one should strive to prevent perfect freedom in the choice of counsel. If the accused chooses to select poor aid, he must be responsible for his choice; if the lawyer were foolish enough at any time to show contempt of court, the judge has easily the power to prevent the outrage. Any priest in good standing called upon by the accused to aid him should at once be

accepted by any fair-minded judge; and the rejection of any one as counsel without a very serious reason is very strong evidence that passion, dislike and prejudice, not zeal for souls or God's glory, are at the bottom of the charges made. It is very important that an accused person should be always authorized to take as counsel one in whom he places perfect confidence. It were absurd for him to have to rely for his defence upon one suggested to him by the judge, especially where the judge is at the same time the one to spur on the prosecution. Any acceptance or approval ascribed to the bishop in this selection must necessarily be limited to the mere right of rejecting one, whose name may be offered in open derision of the court. The Propaganda took the precaution in a supplement to its Instruction to assert the right of the accused to the aid of counsel, which, strange to say, had actually been called into question.

In case the accused should fail to answer to a formal citation before the court, provision was made that a second formal notice should be sent him to appear within a fixed and reasonable time, and then, if he failed to answer and had no sufficient and legitimate excuse for his absence, he might be condemned as contumacious.

There was only one exceptional case in which it was allowed to bishops to dispense with the formal trial, viz., when a shepherd or pastor of souls had practically become a wolf to destroy a member or members of the flock, and had succeeded in covering up his tracks in such a way as to prevent his misdeeds being proven in a juridical manner before a court of law, though the bishop might be able to obtain positive knowledge of them, which could not be used in a trial, for instance, because the witnesses through fear of personal harm to themselves refused to appear publicly before the ecclesiastical court, or because the public manifestation of a secret delinquency, though sufficiently known to the bishop, might shock the faithful. The bishop is directed to have not only moral certainty of the truth of the alleged charges, but such sufficient evidence as will be likely to convince as well the higher authority, to whom recourse may be had by the accused when the punishment is inflicted upon him. This exceptional judgment is said to emanate "from the informed conscience," or for reasons known to the bishop; and in this exceptional sentence the bishop is obliged to state that he is pronouncing it in virtue of the exceptional legislation for this special purpose made by the Council of Trent. The only sentence that can be pronounced in accord with this special legislation is a suspension from the exer-

cise of orders already acquired, or a prohibition to ascend to a higher grade. It must be limited as to time, which must be stated in the sentence. The motive of the sentence should ordinarily, but not necessarily, be made known to the suspended one. There is not in this matter the ordinary appeal to the usual next higher court, but the Holy See insists upon the declaration that any one accused or punished has a right, if aggrieved, to have recourse to this Supreme Tribunal, which will always require clear evidence of the guilt for which the chastisement is inflicted. It is also understood clearly that this extra judicial sentenee may never be inflicted where there is any publicity of any kind about the charge brought, for then the formal trial is required, when the requisite evidence sufficient to induce moral certainty from the acts of the court must be had to lead to a sentence of punishment.

We see what safeguards the Church insists upon for the care of clerics' reputation in the one exceptional case, where it permits exceptional legislation deemed necessary for the good of souls, which is the supreme guide of the Church's laws.

Even where a charge is notoriously true, the Church does not wish it to be punished, till the truth of this very notoriety is properly sifted in a juridical form. Not merely the notoriety of a fact must be proved, but the notoriety that the alleged fact is a delinquency must be clearly evidenced.

In the case of a sentence by a bishop "from his informed conscience," or for reasons known to himself, the only penalty which he is allowed to inflict is the suspension from the exercise of the ministry. This does not at all imply that the person is removed from his office of missionary rector or any other position which he may hold, but only suspends for a time to be specified from some portion, which must also be mentioned, of the exercise of his spiritual functions. Provision is to be made for a substitute in whatever portion may be curtailed from his spiritual faculties. Under no consideration can an irremovable rector be removed from his rectorship by any such procedure ; for this removal there must always be the formal trial. Yet even the irremovable rector might become subject under the given conditions to this temporary suspension from the exercise of the spiritual faculties, from the informed conscience of the bishop ; and then an administrator may be appointed for the interval.

The form of investigation or trial that has just been considered had been granted to England as early as the meeting of the first Provincial Council of Westminster in 1852. The Propaganda

extended it to the United States in 1878, alleging that the form that had been adopted by the Second Plenary Council of Baltimore had been found insufficient to put an end to the complaints of the clergy that a proper investigation had not been made before they were subjected to great disgrace, humiliation and very severe punishment, while on the other hand when recourse was had to the Holy See about these complaints, and the Holy See had sought for the grounds on which they had been punished, no proper records had been kept of the alleged offences or of the evidence which had been brought against them; hence the Holy See found itself forced on this ground alone, to require their re-instatement, and sometimes even the guilty were thus enabled to escape their just deserts.

The fact was that the form of the Second Plenary Council of Baltimore had not in reality been put into execution at all throughout the immense majority of the dioceses of the country. As a matter of fact, in this country the limitations which the canon law places upon the power of bishops had never been realized by them and nowhere else has there ever been such dependence upon the bishops' will as in this country. Rome found it necessary to take occasion from the frequent complaints against arbitrary measures to lay down a precise form, no longer of their own option, but made out in accord with the recognized equity of the Church, to which all bishops should be obliged to conform whenever they undertook to discipline or chastise any cleric of whatsoever grade, this obligation naturally becoming the greater in proportion to the greater importance of the grade and the vested rights acquired by those who were to be brought to an account.

It is well to state that a great advantage in the form presented by the Propaganda was the selection as prescribed of the Commission of Investigation by the bishop after an opportunity was given to the clergy to suggest the candidates, and the bishop was supposed only to reject the nominees of the clergy if he had good reasons thoroughly known to himself for the rejection. It was expressly provided that if the first court decided against the accused he had a right of appeal to the Metropolitan, whose tribunal, appointed in the same way, was to use the same method for investigating the charges and adjudicating upon them. An appeal again from the Metropolitan's decision to the Propaganda was always reputed to be proper and lawful. In case the first trial took place in the Metropolitan Court, an appeal from it to the nearest Metropolitan, and then to the Propaganda was supposed to be the ordinary

course. Throughout this country this instruction is allowed to be still in force, wherever it has not been superseded by the regular canonical erection of the Diocesan Curia or Court, which carries with it a new form of procedure in accord with the canon law of the church. The Curia or Ecclesiastical Court is being rapidly introduced into almost all the dioceses throughout the country in accord with a special instruction from Rome, issued in 1884 for adoption by the Third Plenary Council of Baltimore.

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## CHAPTER XIII.

Cardinal Pecci., Bishop of Perugia, originates a summary procedure for trials of clerics. Pope Leo XIII approves the extension of this form of procedure to Italy, France and the United States. Strict adherence to the form of procedure necessary to impose any obligation of submission on the part of the accused.

The Propaganda instructed the bishops of the Third Plenary Council of Baltimore to substitute wherever it was possible, for the former procedure in clerical trials imposed upon them in 1878 another method of procedure which is founded upon the canonical establishment of the regular Curia or Ecclesiastical Court in each diocese. This method commended itself greatly to the bishops of Italy because of its august source and originator, who was no less a personage than the present Pope, Leo XIII, though it was framed by him whilst Bishop of Perugia. He thought that during the present friction between the Church and the civil authorities of Italy, the strict adherance to the prolonged forms required by Canon Law for the trial of clerics was liable to be hampered by probable conflicts with claims made by the civil authorities and very often would lead to the preventing by the civil authority under one specious pretext or another, of the trials of clergymen whom the civil authorities might choose for any reason to favor. It was suspected that clergymen perhaps worthy of censure, might shield themselves then behind the usual delays allowed by the Canon Law if they were not in some way curtailed, till there was a good opportunity for the civil authorities to intervene. He hit upon a more expeditious and summary procedure, which would contain all the substantial forms which he thought were required by equity and justice, whilst a number of technical details were eliminated, whose effect seemed more to prolong the trial, than to promote the interests of justice, whilst the delay might cause serious detriment to souls. When the Cardinal Bishop of Perugia was

elevated to the Chair of Peter, attention was called to this form of procedure which had guided him in dealing with the clerics of his former diocese, and other bishops of Italy wished to make use of it for their diocese.

The Congregation of Bishops and Regulars, which has under its control the management of the principal Ecclesiastical matters of officially-called Catholic countries, determined, with the sanction of the Holy Father, to confer upon all the bishops of Italy the right to substitute this form of procedure, for the lengthy forms of Canon Law where it was supposed that these could not be properly carried out. The Congregation in its publication of this form of procedure in Italian on June 11th, 1880, makes this preliminary statement:

"This Sacred Congregation of Bishops and Regulars after maturely considering the present condition of the Church which is impeded almost everywhere from bringing her external action to bear on Ecclesiastical things and persons, and taking also into account the lack of proper facilities for the regular organization of the Ecclesiastical Courts, has decided to expressly authorize the bishops to use a more summary form of procedure in the exercise of their authority to discipline clerics, and in order that every right of justice may be secure, and canonical regularity and uniformity of procedure be maintained, it considers proper to appoint the following rules to which the Ecclesiastical Courts must adhere."

We are told in a letter signed by the Cardinal Prefect and the Secretary of this Congregation, dated January 14, 1882, that some bishops of France requested that this same method of procedure be granted for use in their dioceses, and that the Holy Father then extended the right to use it to all the bishops of France. At the meeting of the Archbishops of the United States, held in Rome, in November, 1883, to receive the preliminary instructions from the Holy See which were to guide them in framing the legislation for the Church in the United States in the Plenary Council which was to be held in the following year, the Committee of Cardinals of the Propaganda presented to them this same form of procedure as a substitute for the instruction which had been given for their guidance in 1878. With some modifications suggested by the American archbishops and bishops, to which our attention will be naturally called, this new procedure is prescribed, according to its title, as "the established form for taking cognizance of and deciding the cases of delinquency of and for the disciplining of clerics in the United States of North America." Hence, while for Italy

and France this new form was somewhat of a departure from the ancient and universal usage, it had the effect of bringing the far greater part of the dioceses of the United States into greater conformity with the universal law by the positive requirement of the establishment of the Curia or Ecclesiastical Court in each diocese. The only means left to any bishop to escape this requirement was to make a special petition to the Holy See for exemption, detailing the reasons which prompted the request for such exceptional privilege. Even then the understanding must be that for that diocese the prescriptions of the instruction of 1878, with its supplement of 1879, were to be held in force.

It is well, also, to note that while this Instruction for Italy and France was a departure from the universal canon law the very clear statement concerning this Instruction was given to the Italian bishops "that in the imposition of penal measures the Right Rev. Ordinaries will observe that it is not intended by this Instruction to derogate from the solemnity of judicial proceedings, as required by the Sacred Canons, Apostolic Constitutions and other ecclesiastical regulations, whenever these can be freely and fully carried out. This summary method is only granted to provide for those cases and those courts in which it would be either impossible or it was not believed to be expedient to have recourse to the more solemn proceedings." There was no need of injecting this explanation into the decree as imposed upon the bishops of the United States, because the solemn forms had never been in use at all in this country. It was only, however, because of the difficulties that in modern society everywhere seem to beset the free action of the Church, that the Holy See would countenance any departure from the ancient usages of justice found important and necessary in the course of time, and approved by experience.

But it must be remembered that where such modifications are admitted on account of the circumstances of different times and places, still the greatest importance is to be given to the principle involved in the rule "that the decrees of the canons are to be obeyed, and no one has the right in Ecclesiastical trials or decisions to follow his own opinions, but must be guided by the authority of the canons." Such is the emphatic principle laid down for all judges by Canon Law. (Dec. Lib. 1, Tit. 1, C. 1). No one has a right to take his own wisdom, much less his own conceits as the guide for the execution of the authoritatively modified methods of procedure, any more than he had in the execution of the ancient rules in their entirety. Rather more diligence

must be shown in the strict observance of the modified forms, because the modification itself is considered odious by the Holy See, and forced upon it by circumstances which it laments, precisely because they have the appearance of requiring the absence of certain forms, which experience had sanctioned, to avoid the probability of injustice being done. The Church has always realized the principle that it is better for the guilty at times to escape, than for the innocent to be condemned unjustly. Hence she will always insist upon certain substantial forms, whose observance cannot be dispensed with, without the gravest fear and suspicion of the lack of equity and fairness. Wherever their observance is denied, personal motives for the accusation may justly be surmised. In fact, wherever a trial is not offered to an accused one even without any urgency upon his part to seek it, there is good ground for challenging the justice of and for finding fault with the superior who threatens, and much more if he inflicts punishment without it. Any sentence passed in this way can have no effect upon the conscience of the accused, and whilst outwardly he may deem it advisable and more prudent to acquiesce in the result, yet by the illegal action a wound is inflicted upon the reputation of Church authorities for equity which even the fullest reparation afterwards made can never fully heal.

There are many special reasons why in this country for the welfare of the Church strict adherence to the substantial forms of the prescribed trial will always be found to be of the gravest importance. The natural temperament of the people is opposed to any appearance of arbitrary treatment. This same sentiment has been deeply ingrained in the early training of priests who till the years of manhood have been associated with the everyday thoughts and feelings of the people. All without exception are thoroughly imbued with the feeling that no crime or delinquency can be properly punished till clearly proven. We are also to keep in mind the recognition of the principle that it is better for society itself that many guilty should escape unpunished, than that one innocent one be unjustly or unduly punished. The absence of the proper method for proving the guilt of the accused is sure to produce sympathy with him, and bring to his side men who might otherwise have no sympathy with his cause.

The importance of the greatest manifestation by an Ecclesiastical Judge of the desire to give the accused a fair chance to show his innocence, or even to extenuate his guilt is increased in this country by the almost excessive protection given to the accused by the civil law and practice. This cannot but create a feeling on

the part of the community that there is more dislike than equity shown if the forms of Ecclesiastical procedure so evidently framed to give every advantage for the detection of delinquency to the Ecclesiastical Judge, are not properly followed. In the Ecclesiastical procedure there is very slight chance given to the guilty to escape punishment.

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## XIV.

Bishops are primarily shepherds, and secondarily judges. The new form of procedure explained. The duties and rights of counsel for the accused clearly announced. The Procurator fiscalis must be an expert in law and in sifting testimony.

St. Bernard gave a very useful standard for the different positions in the ecclesiastical life, in allotting them according to the various dispositions of men. When told that such a one was pious, the saint remarked: "He will do splendidly for the monastery." When told that another was learned, he commended him for the position of teacher and preacher; when a third was spoken of as prudent, "There's a proper person," he remarked, "for a bishopric."

This explains the traditional preference in the Church, of a Doctor of Laws to a Doctor of Theology in the candidature for a bishopric. Knowledge of the laws of the Church is ordinarily better for the administration of a diocese than a deep knowledge of scientific theology. A bishop is, however, always supposed to be a Doctor of Theology and of the Law, and if he has not obtained these degrees, he is expected to be very learned in both. Among the questions to be answered concerning candidates for a bishopric in the United States, are where he studied and what degrees he has attained, and if he has been a professor, and in what department.

The position alone of Judge, which is an integral part of the bishop's office in his diocese, points directly to the importance of his being thoroughly conversant with the jurisprudence of the Church.

Yet while Judge he is supposed never to forget that the essence of his office is that of chief shepherd, appointed to feed the lambs and the sheep of the flock, and the power to govern and correct is only derived from the duty of love and self-sacrifice imposed upon him in behalf of the flock. His most earnest endeavors when forced to give his attention to the defects of his co-laborers in the care of the flock, are to be used to interest them in the care of the sheep, and impress upon them the importance of greater watch-

fulness and self-denial because of the damage likely to come to the flock, in whose welfare they are supposed to be all earnestly interested, though upon his shoulders a greater and universal responsibility has been laid. As St. Jerome (Apud Gratianum can 7. dis. 95), remarks: "Bishops are to remember that they are priests, not lords. They are to honor clerics as clerics, that the clerics may give to them the honor due to bishops. The saying of the orator Domitius is famous: 'Why shall I honor thee as prince if thou honorest not me as senator.'"

The Episcopal crozier is recognized as the symbol of pastoral, not of princely rule. The bishop's duty is as St. Bernard describes it (lib. 3 de consid.), "to convert to the faith the faithless, to avoid alienating the faithful, to direct those astray into the right path, to recall the mistaken to the truth, to reason with those who are misleading others, to work for their amendment if this be in their power, and when this is found impossible to cut them off from doing harm to others."

This pastoral duty involves the watching over the conduct of the clergy and the preventing and eliminating abuses. In the direct pastoral work much is left to the bishop's discretion, which is presumed to be guided by a genuine love of his co-laborers and of the flock, and to be alien from any petty interest or unkindness. Before even attempting to admonish or to suggest any spiritual remedy for a supposed evil, he is required explicity by the Instruction for the New Mode of Procedure for Disclipining Clerics, to make a thorough investigation concerning the truth of any allegation made. Certain prescribed ways must be followed to insure the impartiality of even this preliminary investigation. Nothing is more likely or calculated to wound an honorable mind than a warning seriously given by a superior, where there was no ground for such action. Charges springing from anonymous persons should almost invariably be thrown into the waste basket. Statements of talkative, spiteful and easily-faultfinding persons are to be brushed aside, especially if made against one whose life has been hitherto irreproachable.

There may at times be suspicious circumstances, which a frank talk can easily explain away, or even if imprudence has allowed rumor to wag its tongue, a proper private really fraternal or paternal caution to avoid such circumstances for the future is prescribed. It is only when the friendly notice will not be heeded that the legal caution should be applied. The legal forms of procedure are required whenever any formal punishment is sought to be legally inflicted or before any legal mandate restricting his

liberty, imposed for the purpose of disciplining him, can be properly imposed.

This mandate must be in legal form, and the nature of the delinquency to be avoided must be clearly stated as well as the special punishment that should be the result of disobedience. Whenever any punishment is inflicted without the observance at least of this preliminary form, it is an abuse of authority.

Any one who deems that there is no sufficient ground for the imposition of such special restriction upon him, has the usual right of judicial appeal. No such restriction as a punishment can be legally imposed extra-judicially. As soon as there is serious intention of inflicting chastisement of any kind, at once the legal forms must be brought into requisition. A formal citation with an accurate description of the charges made is a necessary preliminary. This statement of the charges may be omitted only if there were good ground to suspect that the cited one might make use of the document to involve the Judge in some civil suit say for defamation of character or libel. Outside of such an unlikely case, the charges are at once to be made known in the citation, so that when the accused appears he may have had the opportunity of taking legal advice, and may determine how to plead. If the Judge had thought it a case wherein it was advisable not to detail in writing the charges made, he may put off his plea till he has time to examine the charges and take advice. The Judge will then fix the time for his next appearance with his reply. This new Roman Instruction has peremptorily safeguarded the natural right of the accused to the aid of counsel, by not only in so many words recognizing it, but by insisting that the Judge will appoint counsel who will undertake the defence, if the accused should unadvisedly refuse to select an advocate. The instruction as found in the appendix of the Third Plenary Council allows the aid not only of a priest but even of a layman as advocate.

Pirrhing (Lib. I. Decr., tit. XXXVIII., §1) says of an advocate's position: "An advocate is properly one who undertakes the case of another who is present at the trial, and offers him protection and defence. . . An advocate's position is noble, public, honorable and enjoying many privileges.

§ III. "It is the advocate's duty to make clear the merits of his client's case and to bring forth in the trial whatever in law or in the facts tells for his client, and to point out the various meanings of the same fact, and to indicate how far they may be used; he is to avoid insults."

Wherever only justice is sought, every facility is given the lawyer for the accused; but to-day the lawyers' days are few and evil, and he has been lowered from his high estate to be reputed among a low and hateful brood, subject to the suspicion of being intent only upon evil. However, the law itself is more generous toward the advocate, and the new method of procedure (in article 32d), requires that proper access be given to the counsel to all the acts and minutes of the proceedings, begun or advanced, that they may serve as a guide to him in the defence of his client; and he is also at liberty to put in an explanation even before the trial has begun, to save his client from useless vexation. A special clause was added in the American which is not found in the Italian exposition of the new method of procedure, one that was evidently not needed where experience had emphasized the rights of the accused. In article 33d the counsel of the accused is expressly authorized to inspect and give a written answer to the final conclusions of the prosecutor, before they are handed in to the judge for his sentence.

It evidently has been found necessary by the Roman authorities to reiterate and reaffirm strongly the rights of the accused's counsel, lest they should be jeopardized even in the incipient execution of the new procedure in the United States, where they had been called into question in the earlier form of 1878, because not expressly mentioned.

In the new procedure there appears on the scene an official, whose duty and responsibilities are all important. By the former instruction of 1878 the bishop was to be represented before the Commission of Investigation by his vicar-general or another priest specially deputed for the purpose. The majority of the commission must agree that the statements made by the vicar or deputy, were sufficiently well grounded in fact and law, before any further action was taken against a cleric. For this reason the members of the commission were to be selected for this office because of their uprightness and of their knowledge of Canon Law.

The Procurator fiscalis or official prosecutor is now invested with the main duties, devolving on both the vicar or deputy and on the whole commission before the trial began. He is now a permanently appointed official in the interests of the law and of justice; he may not be removed at will, but only for serious cause. It is necessary that he should be placed in a state of independence so that he may never be suspected of carrying out the behests of dislike or prejudice; he must be thoroughly conversant with Canon Law and the rules of procedure. A serious defect on

his part is likely to render futile and useless a protracted investigation and trial. He need not necessarily be the one to first formulate the charges; any honorable cleric may do this part of the work, assisted by the diocesan secretary. But the prosecutor is responsible for the thorough preliminary sifting of the seriousness of the charge, of the character of the witnesses, of the testimony within reach. He is to determine whether there is sufficient groundwork for the establishment of the legal proof that is necessary to demonstrate the truth or to show its moral certainty sufficient to leave no reasonable doubt of it. If after his preliminary investigation he cannot see his way to this, it is his duty to so notify the judge, that merely vexatious proceedings may be stopped. The prosecutor is not a servant of the judge but of law and justice; he must be an expert in law and in the power of sifting testimony and a good impartial judge of character.

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## CHAPTER XV.

The Vicar-general must be qualified to act as judge. In the United States the bishop's qualifications are founded on better presumptive evidence. Hence the Instruction for the United States differs somewhat from the summary procedure for Italy. The Roman, civil and ecclesiastical, forms of trial compared with the modern forms. The judge bound by the law as much as the accused.

In all trials of clerics under the new method of procedure, in Italy, the judge is the vicar-general, whose tribunal is one with that of the bishop, and hence there is no appeal from the sentence of the vicar-general as such to the bishop, but only to the Metropolitan. The office of vicar-general is thus seen to be a very important one, requiring great learning and mature experience. He must be faithful and fair in the administration of justice; and therefore of a temperate, calm and judicial mind. No one who is not fit both by thorough knowledge of Canon Law and by great experience in judicial questions should sit as an Ecclesiastical Judge. We may see what importance is attached to these qualifications from the limited concession made to the Cardinal-Bishop of Montefiascone by the Congregation of Bishops and Regulars in 1843 (Anal. Jur. Pon., June 1884).

In Italy the vicar-general must have the degree of doctor of both Canon and Civil Law precisely, because the complete exercise of Ecclesiastical jurisdiction requires the thorough knowledge of jurisprudence and of the rules of procedure. The Cardinal represented that he was unable to find one who had the necessary

requisites, and asked for a dispensation. The Congregation of Bishops and Regulars would only tolerate even on the presumption of the truth of the impossibility of finding one with the proper requisites, the use of the services of an ecclesiastic without these requisites for one year, considering him as only pro-vicar-general and insisting that he should call to his aid even a layman who was thoroughly versed in the law; and meanwhile the Cardinal must take the pains to find one who has all the necessary qualifications prescribed by law.

The practice in Italy founded on clear decisions of the Congregation of Bishops and Regulars is that the vicar-general is always brought from another diocese, in order that his integrity and alienation from factious and partizan feelings of any kind may be beyond suspicion in the administration of the law and of justice, and because as it devolves on the bishop to be the ordinary instigator of the trial, it is unseemly for the instigator of the prosecution to be the judge.

The vicar-general is in Italy not allowed to hold the office of rector of a parish lest parochial jealousies influence his decisions. A near relative of the bishop, such as brother or nephew, is also excluded from this office.

Circumstances in this country have given rise to the neglect of all these requisites and prescriptions. Hence while in the Italian publication mention is only made of the vicar-general as judge in the Ecclesiastical criminal procedure, in the one adapted to American circumstances the vicar-general or bishop is named. For the appointment of the bishop there was more consultation required, as his name was selected ordinarily at least as one of three by the other bishops of the Ecclesiastical province and submitted to the Holy See with the statement of their various qualifications, and hence there is a greater presumption that he is endowed with sufficient knowledge of Church Law, and fairness in the administration of justice.

The selection of the vicar-general is left entirely to the appointment of the bishop, who is not obliged to consult anyone in making his choice. The law of the Church puts salutary checks upon this discretion of the bishop, which must be regulated and limited at least by compliance with the requirements of the law which determines the important requirements of the office. In this country where the formative process is only slowly reaching its natural development, these checks have been entirely overlooked.

Hence the Propaganda probably considering the more probable possession of these qualifications by the bishops, approved the

modification which suggests in the method of procedure imposed on this country that either the vicar-general or the bishop should act as the judge in the trials of clerics.

The whole method of Ecclesiastical procedure is founded on the old Roman system, which was in use throughout the world at the birth and early development of the Church, and which reached its perfect codification under Justinian.

Roman judges under this system attained a reputation of great judicial fairness in their administration of justice. It was only when the crime alleged was treason against the State that the hand of the judge fell heavily and rapidly upon the accused. The peculiarities of all systems founded on the old Roman Imperial system and which therefore appears in the Napoleonic code, which is much in use in various parts of the European Continent to-day, is that the judge is presumed to be endowed with perfect knowledge of the law, the absolute art of questioning and cross-questioning witnesses, the unbiased and earnest desire of ascertaining the truth, the whole truth and nothing but the truth. He is supposed to have a most rigorous respect for the law, and to have the greatest permissible tendency to leniency toward the accused. He undoubtedly is obliged to base his decision upon the acts, upon the testimonies therein displayed, and the proofs there alleged. But as so much depends upon his knowledge of the law, his acumen in searching for the truth, his judicial impartiality, our modern ideas of the imperfections of the rulers and guides of society have insisted upon enlarging the rights of the accused to be confronted with the witnesses against him, and of putting to them, directly himself or through his counsel, questions that may manifest their bias and show their unreliability. The Roman system relies much more upon the judge than the modern sentiment which gives the accused what he must naturally deem much more trustworthy aid, the right of his own advocate to question and cross question as often as any new testimony is to be dissected. The civil Roman code placed more restrictions upon the number of times of questioning and cross-questioning than the Canon Law which was imbued with more of the paternal tenderness toward the accused, and which supposes that the Ecclesiastical Judge will give in the ordinary procedure the cleric more opportunity to bring out any explanation of his conduct, and to repel unjust insinuations. The judge is empowered to put a stop to any excess either of manner or of quality of questioning, especially in the summary proceedings, which are the matter of this treatise.

The Roman system seems to have one advantage in favor of the

accused over the practice in our common law courts. In these the prosecuting attorney seems to have the right to be the last to sum up against the accused. The Roman procedure in civil as in Canon Law gives this to the counsel for the accused. But the reason of this apparently is that so much rests with the judge. In the Roman system the accused almost as soon as accused, even upon the slightest basis, becomes suspect and is obliged to go to much more pains to prove his innocence than our modern ideas sanction. Yet this prescription that the accused shall have the last say, by himself or through his counsel, before the whole proceedings are handed into the judge for his decision, is so binding that its omission would make the judge's sentence to be of no account. The judge has no right in formulating his decision to have recourse to preconceived opinions of his own about the character or actions of the accused, and his sentence must be based upon the accusations made by the official prosecutor and upon the sufficiency of proper legal evidence brought there and then for his consideration. Sentence pronounced on any other basis is clearly recognized as unjust. The sentence is to either acquit or condemn. The judge has no right to condemn unless the evidence adduced is legally sufficient to produce moral certainty of the fact of the delinquency alleged, and also of the knowledge that it was a delinquency, and hence the judge is expected to give in his decision in a criminal trial, the grounds on which he bases it.

The omission of any of the substantial prescriptions of the form of procedure, and whereas in this summary form only substantial requisites have been laid down, the omission of any of those considered in this treatise, would render the sentence on its face null and void, and not requiring even outward obedience or acquiescence. The Judge is bound by the law as much as the accused, and the open violation of the law by the Judge emancipates the accused from all obligation to pay any attention to his decision. Naturally if this violation of the law on the part of the Judge is not clearly manifest, the presumption is in favor of the Judge on account of the doubt, and outward acquiescence is to be given to whatever effects are legally the result of a valid sentence, which would then be put aside by the appellate tribunal on account of the unlawful conduct of the Judge alone, without even entering into the merits of the case.

Vast learning, great judicial impartiality, love of justice tempered by mercy, great knowledge of human character, a thorough acquaintance with all the phases of clerical life, a true sympathy for the needs of souls, and a dread of the exaggerated standards

of human holiness raised by the laity for clerics are a few of the many qualifications required in the Ecclesiastical Judge who is at the same time Shepherd of the flock.

How difficult for him who has felt himself called to instigate the prosecution, not to base his final decision upon a foregone conclusion come to perhaps even before the first citation! What care, perhaps at times excessive, is not displayed in our common law trials to eliminate from the jury box, a juror who had formed some vague opinion about the accused, if there is any suspicion that this preconceived notion might prevent him from thoroughly weighing the evidence to be brought before him in the course of the trial! Hence the wise practice in Italy of keeping the bishop aloof from the judicial bench, and of appointing as his substitute one who has devoted his life to the study of the law and the way of its administration. The fact of this substitute being clearly one who comes in with each new bishop, and ceases to exercise the office absolutely and finally at the bishop's removal or death, makes him alien to all the partisan entanglements which are likely to arise in every community, and which often create a bias, perhaps a jealousy, against one whose talents are of a higher order, and whose very aggressiveness is a good cause to make him irksome.

But the formative period of this missionary country has thrown upon the bishop himself and almost alone the responsibility of concentrated power which in thoroughly organized dioceses is partitioned among many and subjected to checks which the long experience of the Church in dealing with the difficult problems of human life found necessary to procure and preserve rational obedience. By degrees these important restrictions are being extended in accord with the wish of the Supreme Authority in the Church.

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## CHAPTER XVI.

Penalties inflicted on clerics. Clerical prisons. Suspension, Excommunication, Interdict. A censure pronounced after a legitimate appeal, or founded upon an intolerable mistake need not be heeded.

The penalties inflicted upon clerics in this country have not partaken of the directly temporal character that have often been used in Catholic countries in times gone by, and are still in use in a few of them. There the Ecclesiastical Courts have been equipped with all the accessories of any civil court. In all things of a strictly ecclesiastical character, and in many of a mixed character, all were subject to the Ecclesiastical Courts. Crimes such

as blasphemy, heresy, sacrilege and adultery on the part of the laity subjected them directly to the Ecclesiastical Court. All temporal matters of the clergy, or even where one of the parties was a cleric, were adjudicated by the Ecclesiastical Judge. The cleric had the privilege of being tried in his own court for whatsoever crime he might have committed. The Diocesan Court had therefore a prison attached to it, and had officers for the purpose of arresting delinquents and of obliging witnesses to appear on the side of the prosecution, as also in favor of the accused. Oftentimes the delinquents were punished by fines, or imprisonment, or confined for life to a monastery. Clerics were frequently subjected to a loss of their pecuniary emoluments, or to a privation of a share of the revenues of their benefices. For some heinous crimes they were condemned to hard labor in the ecclesiastical prison, and at other times, after undergoing their term there, they were restricted in their liberty or ordered not to go beyond certain limits of a town or country, or even sent into exile. When they were adjudged worthy of death the Ecclesiastical Court ordered them to be subjected to a ceremony indicating a degradation from their clerical state, that then they might be handed over to the secular authority, which should carry out the law of the State. Hence the saying that the Church "has a horror for blood," never wishing directly to have part in the taking away of life, even for the most heinous offences. It left the execution of this to the civil power. Several of the above penalties were expected to be inflicted before there was any mention made of the spiritual penalties which are called censures. How far an application of some of the milder sort might be practical or desirable in this country is hard to say before an attempt is made to deprive of spiritual helps those who at times most need them. There is a great evil certainly attendant upon a too easy recourse to the serious spiritual penalties, and hence we find the Popes very energetically protesting against their easy and excessive use. The spiritual punishments called censures are suspension, and excommunication, and interdict. The first is entirely for clerics, the other two are used against the laity and clerics alike.

A censure is described ordinarily in Canon Law as a spiritual and medicinal penalty whereby the public ecclesiastical authority deprives the delinquent and contumacious members of the Church of the use of certain spiritual things to correct them, and to make them desist from contumacy. A censure can only be imposed by the public ecclesiastical authority, which has the public exercise of public jurisdiction called contentious, because connected with

trials. The Pope has this power primarily throughout the Church. Bishops have it for their dioceses, and as their vicar-generals have from their office the same ordinary power, they also have this right. Parish priests have no such right, and they are strictly prohibited from threatening censures against any one, as their ordinary jurisdiction relates to the conscience and the tribunal of confession. Yet this power must be exercised in accordance with the prescriptions laid down by law, and the Ecclesiastical Judges are required to be very moderate in their use. We can form an opinion of the moderation required in this matter from the penalties to which Pope Innocent IV subjected Ecclesiastical Judges who should impose censures, having omitted not only the substantial forms of law but even the minor details, which he expressly mentions, of putting in writing the sentence, of expressing the motive of the censure, of giving a copy when asked for to the delinquent within a month, and of omitting its authentication by the Court's seal. He decrees: "If any Judge should rashly transgress this constitution let him know that he is suspended for a month from entrance to the church and from the divine offices. The Superior to whom recourse is had will without difficulty relax the sentence and condemn the Judge to indemnify the excommunicated one for all expenses, and will punish him in other severe manner that this penalty may teach Judges what a serious thing it is to fulminate sentences of excommunication without mature reflection. And we wish that the same line be followed with regard to sentences of suspension and interdict." (Cap. I de Sent. Exc. in VI.) Whilst it is ordinarily required to give outward acquiescence to an unjust sentence of suspension, interdict or excommunication, yet it does not really in any sense bind the conscience, even if the injustice comes merely from the want of due observance of the forms of trial required by the law, though the delinquency may have occurred. No respect, even outward, at all need be given it if notoriously there was no delinquency on the part of the one condemned. The learned D'Avino, in his Ecclesiastical Encyclopedia, at the word "Excommunication" gives this principle in unmistakable language.

"If a censure is evidently null, such as one pronounced after a legitimate appeal or which was founded upon an intolerable mistake it has no effect before God or man. And consequently there is no need of absolution from it, and as its nullity is thoroughly notorious, there is not any obligation to pay heed to it, even outwardly."

Some censures are attached to the violation of the law, and are said to be incurred by the very fact of the violation of the law.

No one however incurs such censure if he was not aware that his action was condemned under censure. Other censures are threatened as consequent upon the disobedience to a Superior's command in matters to which his authority extends. These latter censures cease with the life or authority of the Superior who gave the mandate. Unless it is very clearly laid down that a censure is incurred by the very act of the violation of the law the presumption is that it is attached to the sentence of the Judge who is to pronounce it after a judicial examination of the delinquency alleged. Even where the censure is threatened as consequent upon the act of disobedience to a Superior's command, a special proclamation by this Superior of the actual application of the penalty is needed, before the censure can affect the relations of others with the one so threatened.

Suspension is a penalty entirely confined to clerics, and deprives them either partially or totally of the exercise of the functions of the special grade or order from which they are suspended. In all penalties, the most lenient interpretation compatible with the wording of the sentence may be lawfully followed. It is understood that if a bishop were suspended, he could still exercise merely priestly functions; a suspended priest might act as deacon. Sometimes a priest is suspended from his jurisdiction only, when he is debarred from hearing confessions, and yet may say Mass.

This distinction is all important; oftentimes when there may be good reason to shut off one from the exercise of jurisdiction for the welfare of the flock, it is a very detrimental thing to the chastised individual to be deprived of the best means to restore his spirit of love of God and bring him back to his first fervor, viz: the participation of the Holy Eucharist. As the one suspended not merely from his jurisdiction but from the exercises of his Order, cannot offer the Holy Sacrifice even in a remote district to which he may have retired to hide his disgrace, he is very often debarred from the reception of the Holy Eucharist, because he knows that his reception of it would only call attention to what he is intent upon concealing.

Additional precaution is needed where the privation of all exercise of Ecclesiastical functions is a practical condemnation to beggary, or death by starvation. I have seen it stated in a scientific treatise that formerly in Denmark many prisoners were condemned not for the most heinous offences either, to live on bread and water for thirty days, and that it was practically found equivalent to condemnation to death.

Parallel cases have at times been brought on by a too ready abuse of Ecclesiastical suspension. The law frowns upon a suspension that is declared to be perpetual. As a rule, except in some very extreme cases of delinquency, the attempt to make it perpetual, or without fixing the time of its duration, is sufficient for its reversal and nullification in a higher court. The suspension 'during the good pleasure of the judge,' is a form very much suspected and at least the highest court will see to it that a definite explanation and limitation be assigned to such vague words, unless it be very clear that they are guided by a really loving interest in the welfare of the one so treated.

The penalty of excommunication is the one most frequently heard of and naturally considered as the severest of all those imposed by the Church, as its object is to cut off a member of the Church from its Communion, and therefore from the reception of the Sacraments, or from the participation in all things that are derived from being a member of the body of the Church. The distinction of major and minor excommunication has disappeared since 1869, when Pius IX. practically abolished the minor excommunication. This minor excommunication, before the 15th century deprived of the reception of the Sacraments all who held religious, or without good reason, civil intercourse with those who had incurred the major excommunication.

Pope Martin V., at the Council of Constance, had restricted this censure to those who held this intercourse with those who were excommunicated by name. Grandclaude (Lib. v. Decr. Sect. ii. De Excom. pag. 586), says: "The minor excommunication was not incurred except for intercourse, without sufficient reason with those who were to be avoided, (Vitandi.) To-day, after the Constitution "Apostolicæ Sedis" it has entirely ceased, as no mention is made of it, though the Pontiff (Pius IX.) expressly undertook to enumerate all the censures established by law." And Zitelli (De cens., Art. II; De Excom. page 475) says: "Minor excommunication, as established in law, was incurred for one reason alone, viz; the culpable intercourse with one excommunicated to be avoided, (Vitandus.) This was abolished by the Constitution 'Apostolicæ Sedis.' So declared the Sacred Congregation of the Inquisition on Wednesday, December 5th, 1883, with the approval of Leo XIII."

Hence no censure is incurred to-day by holding civil intercourse with anyone however excommunicated, even if it be by name.

An interdict may even affect the innocent. It is a censure whose object is to deprive the persons interdicted of the use of certain

Sacraments, of the divine office, and of Christian burial; "in as much as they are a participation in sacred things." These last words indicate how it differs from an excommunication which deprives of Communion with the Church, and from a suspension which deprives of the exercise of Ecclesiastical power.

A Church may be interdicted so that no public divine service may be offered there. A person, clerical or lay, interdicted, is debarred from taking part in these public services. Sometimes a whole city or even a whole country has been placed under interdict on account of the deeds of the public ruling authorities, civil or Ecclesiastical.

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## CHAPTER XVII.

Appeal not necessary even from an injustice. The people have an acknowledged right to complain of excessive burdens or other grievances. Restrictions gradually placed on bishops' authority. Appeal first to the Metropolitan and then to Propaganda the ordinary way. Appeal prevents execution of sentence of removal. Yet American bishops obtain a serious innovation upon this rule of Canon Law. Church property safeguarded by the civil courts.

No one, howsoever aggrieved, is obliged to appeal for redress from any grievance to which he is subjected. If deserved, Christian resignation may prompt him to undergo the trouble patiently and submissively, accepting at once the chastisement. If undeserved, supernatural meekness may enable him to exercise his patience, and he thereby acquires great merit in the sight of God. Sometimes one's natural disposition shrinks from the technical labor that may be required in a search for redress. At other times the impediments in the way are too great, the delays and worries are as wearing and troublesome as the punishment inflicted. Again, a philosophical turn of mind may attach little importance to the ills of life.

Grievances are inflicted on clerics judicially or extra-judicially. Those inflicted judicially are connected with the sentence of an Ecclesiastical Court, whenever the punishment is not deserved, because it is in conflict with the evidence, which was either insufficient or too unreliable to warrant an unfavorable decision or because the punishment imposed is excessive and not proportioned to the delinquency proven, or because conducive to the ruin rather than the amendment of the delinquent. Extra-judicial grievances are those inflicted by superiors through arbitrary and oppressive dealings with those under them. Thus a pastor may impose unbearable burdens upon his assistants; a bishop, or con-

sequently his vicar-general, may lay too heavy a hand, and place too excessive a restriction upon pastors or upon those sent to aid them. Any of them may impose excessive pecuniary or spiritual burdens upon the people.

A wise principle prevents the higher authority from paying attention to or from encouraging unfounded and petty complaints coming easily from persons of quarelsome temper.

Respectful remonstrance to the parties supposed to be oppressive should almost invariably precede the recourse to the higher authority.

From the pastor's action there has easily been recognized the right to seek the intervention of the bishop if the assistant's personal liberty is improperly restrained, or even if altogether too heavy a share of the pastoral labor is thrown upon his shoulders by him who has the chief responsibility. The people, too, who are seriously aggrieved or overburdened have an undoubted right to present in a proper manner their remonstrance against a grievance inflicted. This is especially true if there is serious neglect in the administration of the Sacraments, when the first complaint should be made to the pastor who is most likely to procure its amendment, whether the neglect was from his fault or from that of others. In such an important matter connected with the welfare of souls, if the neglect should continue the bishop would heed not anonymous communications but well considered statements authenticated by truthful and known witnesses. The same should be said in the case of serious scandals, and also if excessive pecuniary burdens are unnecessarily piled upon the people's shoulders.

Remonstrances or complaints against a bishop's actions are unfortunately at times found to be necessary, and the care and respect shown in their presentation must be proportionably increased in view of the much greater authority which belongs to them in their diocese. A bishop is truly set to govern the portion of the flock of Jesus Christ assigned to him in his diocese, and special graces are undoubtedly annexed to his appointment by the Chief Shepherd as well as to the Episcopal character received in Holy Orders. However his authority is not by any means of an unlimited character; it is hedged in by the natural law of equity and justice, by the divine positive law and by the Canon Law of the Church. The last or Church Canon Law, because of its mainly human origin is subject to variations, modifications and even complete recall in many respects, according to the various circumstances of time and place.

In this missionary country for a long time priests had, and even to-day to a certain extent have, in certain things, more power than bishops in settled Catholic countries. One proof that comes to mind at once is the power which almost any priest in this country as soon almost as he is ordained receives to absolve from the many excommunications, with four exceptions, which are laid down in law as reserved, and even specially reserved to the Pope himself. In Catholic countries generally few bishops are so privileged.

The bishops have enjoyed a proportionately still more extensive authority. There is hardly a law of the Church in which they are not empowered to dispense in individual cases, and sometimes for their whole dioceses. They receive delegated authority to dispense in almost all the impediments which by the law of the Universal Church annul marriage.

An amusing anecdote told of the late Pius IX illustrates in an exaggerated form the extent of the authority granted to or exercised by them. Some very influential persons were soliciting some exceedingly special favor for a marriage case, which apparently trenched upon a divine prohibition. Of course even the Pope cannot dispense a divine law, except where it is clearly recognized that God left him the dispensing power. So the Holy Father gave as his reply that the favor was not within his power; and hence there was no remedy.

His petitioners had doleful looks, and to relieve the sadness he turned quizzically to them: "It is true that I, the Pope, have not the power, but perhaps if you applied to some of the American bishops they might be willing to grant the favor."

In the formative process of missionary countries it has been found expedient, perhaps even necessary, to place as few limitations as possible to the authority of vicars apostolic and of bishops. This formative period has lasted well nigh a century, and gradually of late there has been an attempt to seriously curtail their almost unlimited power. When men have for a long period had almost unrestricted sway, it is not surprising that its curtailment in accord even with the common law of the Universal Church should make upon them the impression of being an innovation much to be regretted.

At times they almost have a lurking, perhaps an outspoken and expressed feeling that the divine right to rule their portion of the flock is being interfered with by the new restrictions. Yet the chief shepherd of the flock and his immediate counsellors, taught by conflicts with the world for centuries, too often find it necessary

to use their authority to undo the work of imprudence, which is most likely to spring from the use of concentrated almost unlimited power.

The only authority to whom practically extra judicial complaint against a bishop for any excess could be made in this country was the Sacred Congregation of the Propaganda in Rome.

The Council of Trent had curtailed the authority of the Metropolitans so that only the minor complaints against a bishop could be entertained by the Metropolitan, while the more grievous were to be submitted to the bishops of the province assembled in council. As hardly any provincial councils were held in many Catholic countries for well nigh three centuries after the Council of Trent, its legislation in this respect fell into complete desuetude and complaints in serious matters against bishops had to be made directly to the Roman authorities.

In this country, both in extra judicial and judicial complaints, the Metropolitans were very loath to entertain appeals against bishops, whether made by the people or by clerics. So many cases of complaint were in consequence lodged against them in Rome that the Propaganda insisted upon reviving and strengthening the authority of Metropolitans at least in the judicial complaints of clerics against the judicial sentences of bishops. Hence it is now laid down positively in the new procedure for trials of clerics, that where they have good reason to find fault either with the punishment or the excessive amount of punishment, the appeal is to be taken from the Bishops' Court to that of the Metropolitan Court; and if the case in first instance was one tried in the Metropolitan Court, the appeal is taken to the Metropolitan Court of a neighboring Ecclesiastical province.

The proposition made in the Provincial Council of St. Louis in 1855, afterward incorporated into the Second Plenary Council of Baltimore, was that the appeal from the Metropolitan Court was to be taken to that of the senior bishop in the same province. But it has now been arranged that this appeal shall always be taken to another Metropolitan Court.

The higher court is expected to examine the grounds of appeal and if it finds them sufficient, to follow the form of procedure laid down for the court of first instance for a retrial. No encouragement will be given to skipping over the Metropolitan Court, yet the Propaganda asserts always its right, as direct representative of the Holy See, to take first cognizance of any case that may be brought to it, and much more therefore it may use its right to be

the first reviewer of the acts of the Episcopal Court, in which a case was tried in the first instance.

The appeal gives the right to the appellate Court to adjudicate the whole matter on which appeal is taken, but it does not necessarily suspend the effect of the first sentence, and in fact does not where the Ecclesiastical censures of suspension, excommunication or interdict have been fulminated. Hence one juridically even though unjustly excommunicated, suspended or interdicted by sentence of a court is expected to outwardly respect the censure, till the higher court reverses it. This is so only where one has been properly cited before a court to answer for his conduct. If any punishment is decreed without the process of law, there is no need of heeding it in conscience, or even outwardly, even though the delinquency existed.

Ordinarily an appeal from a sentence of the court ordering the removal from a benefice or an office stops the removal till the higher courts, to which appeal is made, have examined the case and given their decision.

A special privilege changing this effect was introduced by the Third Plenary Council of Baltimore, with the consent of the Holy See, though most probably granted with great reluctance because in opposition to what was considered a fundamental principle in Ecclesiastical law that the possession of a benefice should not be taken away till not only a trial was given in the first court, but also ample opportunities were given for a hearing, often likely to be more impartial in the Appellate Courts.

The 286th decree assigns the reason of this, and as it is an accepted law it is important to realize its bearings: "As in many of our provinces the rectors of churches are by law appointed as ex-officio trustees of the churches, caution is to be used lest when it is found necessary to deprive a rector of his office, he should by appeal from the sentence stop its execution, and thereby keep before the civil authority his position of trustee. We decree, with the consent of the Holy See, that no rector, even an irremovable one, who has been juridically (by process of law) removed, or deposed from or deprived of his office, shall be able to appeal against the Ordinary's sentence *in suspensivo* (to suspend its execution), but only *in devolutivo* (the appeal to take effect only after sentence by the higher court), so that he shall cease to be a trustee of the Church, either forever or until such time as the Appellate Judge giving a final decision shall reinstate him. Therefore until the matter is finally settled another rector or an administrator with proper powers shall be appointed and the bishop shall meanwhile

provide for the proper maintenance of the removed rector and the administrator."

Very serious representations must have been made to the Holy See to introduce this innovation. It is very hard for a pastor who has been suspended from his office and may remain so during months and years of delays, that are not of his seeking, to have to depend upon the discretion of the judge who condemned him for the allowance to be made him for his maintenance. Some definite arrangement by law would be most proper. Great precaution will be needed to avoid new and perhaps greater complications before the civil law, of which the germs may easily be seen in the, if not guarded, illegal actions of this temporary administrator for the purchase or sale of church property, or for making contracts. The administrator has no legal standing at all, whether it is a bishop or rector who receives a coadjutor with Ecclesiastical power of administration. The state authorities have been very generous in their guardianship of Catholic Church property, and have granted them all they asked for its legal protection. The Bishop, Vicar-General and pastor have in their hands each year the selection of the two lay trustees. Any two of the clerics if suspicious of the third could without much difficulty deprive him of all active control by their choosing the lay trustees, and apportioning the offices. Fortunately this trustee system is very useful to prevent any one member, or for that matter, any majority of them from doing any serious harm to the property held in trust for the congregation. Any member of the board if he had reason to fear such a serious evil, could easily apply to the Supreme Court, which would give ample time for the thorough sifting and examination of the action to which such a wrong might be annexed. The Courts, with great reason are very jealous of all tampering with trust estates. As each year the two lay trustees are to be newly elected, there is no great difficulty in gaining time to thwart any collusion, if any should occur, on their part with any one of the clerical trustees to the detriment of the trust. No Church property can legally be sold or mortgaged without action being taken at a meeting of the board properly convoked with notice to all the trustees, and certainly no sale can be effected without the permission of the Supreme Court.

## CHAPTER XVIII.

Consultors proposed to take part in the administration of dioceses, and to designate candidates for bishoprics, also to act as judges of causes of clerics. The Propaganda in 1883 recommends the establishment of chapters. The American hierarchy objects. The Propaganda yields; and the American Council proposes still further modifications, which are accepted. The true method of appointing consultors as determined by the Council often neglected.

The first formal legislative attempt to give some of the diocesan clergy in the United States an authoritative share in the administration of the diocese is found in the First Plenary Council of Baltimore in 1852, and takes the form of a recommendation, rather than of a command. The sixth decree of this Council says: "The Fathers have thought it proper to exhort the bishops, to select wherever it can be done, some priests in their dioceses of mature age, and of recognized learning, good conduct and administrative ability, to be appointed as consultors, whose opinions they will seek in the administration of the diocese, wherever needful. They have thought worthy of commendation the custom which has prevailed somewhere, of calling the consultors together once at least a month on a fixed day, to discuss the affairs of the diocese."

The Propaganda in its letter of February 17, 1857, when giving its recommendation to amend certain decrees of the First Provincial Council of St. Louis of 1855, wrote to the Archbishop of St. Louis with instructions to make known its wish to the other Metropolitans of the United States, that the services of these consultors, whose appointment had been recommended by the Plenary Council of Baltimore, should be utilized, among other serious affairs of the diocese, in the examination and trial of priests who may have been charged with any delinquency.

The Eighth Provincial Council of Baltimore, or the first held there after the above decree of the First Plenary Council, took prompt action in conformity with the spirit of the legislation there recommended. It will be well to produce the 6th decree of this Eighth Baltimore Provincial Council: "As by the 6th decree of the Plenary Council of Baltimore, bishops are admonished to select some among the more worthy of the priests of their dioceses, who will be his consultors in the administration of the diocese, we now add an exhortation that they enlarge the number to ten or twelve though they may not be bound to hear the opinions of all even in the more serious matters. It will be sufficient if they submit each matter expressly to three or four of them. All the consultors however, on the demise of a bishop, will be expected to send in writing to the archbishop those who in their opinion should be

promoted to the vacant See. In case of the archbishop's death, word is to be sent to the senior bishop of the province. Let them give their reasons for their preference, and any other information which will be of use to the bishops to aid them for their recommendation to the Holy See, of fit priests for such promotion. We do not decree this as a certain and fixed law to bind the bishops in their action either with regard to the number or to the duties of the consultors, leaving the matter to the prudence and conscience of the bishops."

Evidently Archbishop Patrick Kenrick, of Baltimore, who had been the delegate apostolic in the First Plenary Council and was responsible for the most important part of its legislation, was determined as far as he was concerned not to allow it to become a dead letter, even where it seemed to trench upon some of the prerogatives which the bishops had heretofore exercised, without any serious attempt at limitation.

How far this legislation was put into practice in the dioceses of the province outside of Baltimore diocese, it is hard to say. I have seen it quoted by a successor to Archbishop Kenrick as the recognized rule for Baltimore even before the Third Plenary Council. No other province is known to have imitated it.

We find the Propaganda always encouraging any action of the Provincial or Plenary Councils for the limitation of the very extensive power of bishops at times exercised, through human frailty, to the detriment rather than to the well being of the portion of the flock under their control. As the hand of authority reaches quickest and most heavily their co-laborers, it was important that some of these should be recognized to have an official and authoritative voice, having a right at all times to be heard in any serious peril of the flock, and where the consciences of these counsellors is burdened with the obligation of doing what lies with them to avert the evil.

The Second Plenary Council of Baltimore in 1866 while repeating the decree of the First Plenary Council on the appointment of Consultors, laid down more imperatively the necessity of having them. No. 70 says: "As bishops, especially in this country, are overburdened with work, and because of their charge of the temporal and spiritual administration of the diocese are too busy of themselves alone to be able to do justice to their office, they must call to their aid priests of recognized piety, zeal, prudence and learning, who will aid them by wise counsel, and will be willing to take on their shoulders a share of the serious Episcopal responsibility. By thus acting, the second order of the clergy comes to

the assistance of the first, and their agreement and mutual help give unity and strength to the administration which thus tends smoothly and strongly to the greater glory of God and to the salvation of souls."

As, however, none of the councils laid down in any positive manner the precise and definite duties belonging to these consultors, it is not surprising that even after the Second Plenary Council their appointment should have come to be considered for many years a mere honorary thing, with hardly any special time appointed for meeting, or without any really recognized right of giving advice upon any matter whatsoever of the diocese.

In one matter the Propaganda found it necessary to intervene directly with the exercise of its own authority in 1878. Whereas the Consultors, as stated above, were required to be called to adjudicate the cases of priests charged with delinquency, as in many dioceses the neglect to appoint any consultors was an excuse for omitting the prescribed procedure, the Propaganda sent a positive command to all the bishops to designate five, or at least three priests, whose aid and counsel they would be compelled to seek before disciplining, or in any way chastising a cleric, and before whom any cleric accused should have a perfect right to claim a thorough investigation of the charges made, before any attempt should be made to subject him to punishment, which he might claim he had not deserved.

To remedy the absence of the consultors the Propaganda had evidently before the Third Plenary Council of Baltimore in 1884 determined that there should be established in the principal dioceses of the United States, Chapters or the official senates of the bishop, composed of a certain number of priests whose appointment should be for life, one half at the beginning to be chosen by the bishop, the other by the clergy. Afterwards the vacancies in this body were to be filled by the bishop whenever any of his appointees were removed by death or otherwise, and the other vacancies by the Chapter.

However the archbishops and bishops who in 1883 had been summoned to Rome to examine the preliminaries for the Plenary Council made such strong representations against the appointment of such a legally fixed and perpetual body to limit their authority that the Holy See permitted the appointment instead of a body of consultors, who would have a great many of the powers of a regular Chapter but would not have the legally recognized and clearly defined authority which a Chapter has in Canon Law. We find however a very great difference between the consultors as appar-

ently accepted by the preliminary conference of archbishops and bishops in 1883, and the consultors under the actual enactment of the Third Plenary Council. As appointed in accord with the conclusions of the preliminary conference, there would have been comparatively little difference between them and the members of a Chapter. Nominally "movable at will" it would have been almost as difficult to remove them as to remove a member of a Chapter. The Propaganda sent a very strong recommendation to the Plenary Council as to the manner of their appointment. "The consultors of a bishop must be six or four and where so many cannot be had, at least two. The consultors are to be chosen half by the bishop and the other half after their proposal by the clergy. The proposal by the clergy is to be in this way: all the priests exercising the ministry in the dioceses will offer to the bishop a list of those whom they deem worthy of the position of consultors without absolutely determining any: from this number the bishop will choose those whom he in the Lord will judge to be the more fitted for the office."

This original proposition of the Propaganda evidently implied that all the clergy assembled together in Synod, where the selection was expected to be made, should offer a list of names to the bishop. The clergy was not to confine itself to three names, but were expected to give more, though how many was not stated that the bishop might not be to restricted and bound to take some very distasteful to himself, even though the clergy might have them in the highest esteem.

The committee of the Third Plenary Council, to which was referred for examination this strong recommendation of the Propaganda, unanimously agreed upon a system for this choice which would insure a tolerable representation for the clergy and secure great latitude for the bishop. The selection for candidates for a bishopric was expressly taken for the basis of the way of proposal on the part of the clergy. As those having the right to nominate bishops are assembled for the selection of three names, from whom the Holy See is expected to choose one, so it was the unanimous wish of the committee that the clergy should be assembled to designate three names for each position of consultor that was to be given, the bishop being expected to choose one of those three for the place.

At the meeting of the bishops and during their discussion I have been assured that nothing was said or done to destroy this purport of the committee's unanimous suggestion. The Third Plenary Council's decree (No. 19), merely repeats the wording of

the Propaganda's recommendation, with the additional clause: "For each consultor to be chosen three names must be proposed; from these the bishop will choose those whom he will judge in the Lord to be more fitted for the office."

A different practice has been introduced into some dioceses, viz: that each individual priest sends in separately three names for each vacant position, so that where there are in a diocese one hundred priests, hardly any will escape nomination by some one, and this nomination by one or by few would be sufficient to comply with the letter of the law as thus interpreted, and the bishop would be deemed authorized to select this one, who could not be considered to have been proposed by the clergy.

This very serious increase in the number of candidates would decrease instead of increasing the representation of the clergy, which was the acknowledged purport of the proposal of the Propaganda, and of the unanimous agreement of the committee of the Council in charge of it, and certainly there is nothing in the wording of the decree of the Council to contradict this interpretation, which would secure for the clergy some tangible representation in the selection of half of the consultors, whose advice is authoritative in the administration of a diocese.

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## XIX.

When the advice of the consultors is necessary. The bishop obliged to hear the advice, but not bound to follow it. Action taken without this advice null and void, in certain defined matters. Serious modifications in the consultors' duties from the recommendations of the Propaganda. The consultors appointed for three years only. How far the contracting of debts for church purposes is allowed.

As mention was made of "Chapters," or the body of clergy appointed by Canon Law to assist the bishop in the government of his diocese, it is well to say that canonists teach that while Chapters in their outward form were not imposed by divine law, yet they derive in their essence their origin from the Apostles themselves. In the very early days of the Church the body of the clergy whom the bishop was expected to call to his aid in the administration of the diocese was composed of twelve priests and seven deacons, modelled upon the college of the Apostles and the deacons, as established in Jerusalem at the very dawn of the Church's history. In the "Apostolic Constitutions" they are designated as counsellors of the bishop and the crown of the Church, whose office entitles them to take part in every judg-

ment. In the fourth century the Fourth Council of Carthage in the 23d canon decrees: "The bishop shall undertake no judicial action except in the presence of his clergy; his decision will be invalid if not sanctioned by his clergy." The 31st and 32d canons decree: "The bishop must regard Church property as his trust only, not as his possession. If a bishop gives away, sells or exchanges any portion of Church property without the consent and signature of his clergy, it is invalid."

The legislation of the Church which to-day gives the priests an authoritative part in the administration of dioceses, limiting and restricting the bishop's power, is thus seen to be in open accord with the practice from the earliest days. We all know that the greater the power, the greater is the fear of abuse from the frailty of human nature, and the more disastrous the results from ill-considered and hasty action. Hence, Nardi, treating of this subject, says, that even in the early days of the Church: "the Holy See, because of its multitudinous business, and because of its greater dignity, had double the ordinary number of cardinal priests, that is, twenty-four with an archpriest."

The body of clergy to-day appointed to give advice to the bishop in full accord with the Canon Law is called the "Cathedral Chapter."

The establishment of these "Chapters" was desired by the Cardinals of the Propaganda, who presided in the name of the Holy Father in 1883, at the preliminary conference, to prepare for the Third Plenary Council of Baltimore. However, the archbishops and bishops of the United States represented very strongly that chapters with all their fixed rights and perpetuity of tenure, were opposed to the character of the American people; that it would be difficult to have a body of clergy that could be brought together for the purpose of a Cathedral Chapter, on account of the distances of their various residences and the expenses of travel; perhaps too their new dignity might be a temptation to be an obstacle instead of an aid to the bishop, perhaps even as a cause of quarrels. The archbishops and bishops were advised to give attention to several countries into which these "Chapters" had been lately introduced as England and Holland without the inconveniences which they seemed to fear, because these Chapters had no power to act independently of the bishop, but formed one moral body with him, and their duty was to treat of those matters which were laid before it by the bishop. Meanwhile they might have a substitute in a body of consultors, one half of whom were to be selected by the bishop on his own judgment, the other half

to be taken from those proposed by the clergy, which, however, could not restrict its proposal of candidates to the precise number of positions to be filled, but was expected to offer a larger number from whom the bishop might pick out those most acceptable to himself. The duties of these consultors as epitomized in the final instructions sent from the Propaganda for the consideration and legislation of the Third Plenary Council of Baltimore were to give advice, first, when to call a diocesan synod, and make known its decrees; second, when to divide a parish or mission, after hearing the rector's advice; third, when there was question of giving a parish in charge of any body of regulars, in which case there would also be required the permission of the Holy See. Their consent would be required for the purchase or sale of ecclesiastical property, the seeking of mortgages or anything else that would have the appearance of alienating it. The details of the manner in which the alienation or semi-alienation was to be effected should be left to the discretion of the bishop. He was also to be empowered to spend three hundred dollars without consultation. The consent of the consultors should be necessary for the appointment of a new consultor, and of the examiners of the clergy outside of the synod and for the increase of the bishop's salary.

The actual legislation of the Third Plenary Council made radical changes in this programme. In first place the consultors instead of being for life or during good behavior, are appointed for three years. Secondly, their advice only is laid down as authoritative, their consent is not required in anything; though it was clearly understood that the consent of the majority was all that was meant by the consent of the body of consultors. Thirdly, the bishop's power was enlarged in the matter of spending for church purposes. All, priests and bishops, readily understood that in constant recurring needs, of building and renovating churches and schools it would have hampered a bishop to restrict him to such small sums as three hundred dollars, and all recommended that it should be enlarged to five thousand dollars. But the Holy See, which has a perfect dread of debt, then added a clause that its permission would be required for the expending of anything above this amount; but, on further representations on the part of the bishops, it agreed not to enforce the clause for the space of ten years, but required a statement of every new indebtedness incurred to be put down in the report sent to the Holy See by the bishop of the financial state of his diocese. In European countries it seems to be deemed an impropriety to have any church property encum-

bered with debt. Yet it is perfectly clear to us, that unless we were able to build with borrowed money even on mortgaged property, there would be a sudden stop put to undertakings necessary for the spiritual welfare of the people. In the case of building a church, where the impropriety seems greatest to have debt, according to the old traditional methods, every one here perceives that besides the privation of Mass, and preaching, there would also be the very serious absence of the best source of revenue for meeting the debt, the collections and pew or seat rents during the services.

With the immense immigration still pouring in upon us from foreign shores a very large number of Catholics, many of these would be exposed to great peril of the loss of the faith from not having a church, which would be the case if all the amount required for the building of a church had to be collected, before it was erected; while these people themselves will be enabled to take part in the good work at once by giving gradually a portion of their wages for its maintenance while their faith is being nurtured and strengthened in a building, even though it have that ugly ornament of a mortgage. Hence, from present appearances that dispensation from seeking the Propaganda's permission to borrow more than five thousand dollars will have to be frequently renewed, before the old normal state of old Catholic countries can be established here of not using buildings for church purposes which are encumbered with debt. Improvements often cannot be put off till the full amount required for them is in the treasury. The ordinary way for the erection of churches in Catholic countries where the church is free is to obtain from a municipality a site and funds not only to build, but to endow the church for the maintenance of the clergy attached to it. At times a prince or wealthy person erects the church and endows it; he therefore receives the right to present for its control a clergyman whom the bishop is expected to accept unless he should know him to be unworthy of the charge. In Lower Canada the civil right has been maintained for the bishop, when he erects a new parish, to assess and tax each individual man of the new parish according to his means for the erection of a church, rectory and schoolhouse. This is in accord with the old French law that was in force before the English took possession of Lower Canada, and the treaty between France and England still binds the colony to respect the rights and privileges exercised by the Church previously to the occupation of Canada by England. On the other hand to-day in France, the Church is subjected to great hardships, because all

the church property is vested in the State, and for any repairs it is necessary to have permission from a State bureau. Even the salaries of the priests and bishops are a part of the civil budget submitted annually to the vote of Parliament.

The meetings of the consultors must be held at least quarterly; in case of some vast dioceses, half-yearly meetings will suffice. But everywhere at other times the meeting is required for any of the important transactions that have been enumerated. It is not enough to consult them apart, but the advice must be sought when they meet together as a board. No consultor can be removed during the time for which he has been appointed except for plain and permanent physical incapacity resulting from serious illness or the like, or else for some grave delinquency juridically proven or of such public notoriety as openly to affect his character or public reputation. The consultors who hold the position at the death or removal of a bishop will continue in their position until after the appointment of a new bishop, as the advisory board of the administrator of the diocese during the vacancy, and then for a further period until the newly appointed bishop takes steps for the selection of new consultors, which he is obliged to make within six months from the day of his consecration, in the way already explained.

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## CHAPTER XX.

The designation of candidates for bishoprics by the Consultors and irremovable rectors. System of election of bishops in different periods of the history of the Church.

A great step in advance in favor of the participation of priests in the care of a diocese was taken by the Third Plenary Council of Baltimore, when, under direct instructions of the Propaganda, the Fathers of the Council gave the designation of the candidates for a bishopric into the hands of the irremovable rectors, appointed by right of merit manifested in a competitive examination before the synodal examiners, and of the consultors, one half of whom must be proposed by all the priests of the diocese.

Our Lord appointed the first bishops who were the Apostles. We find that when a substitute was to be placed in the forfeited episcopacy of Judas, St. Peter counselled all the gathering of 120 in the Upper Chamber of Jerusalem to nominate two, from whom the final appointment might be determined by the drawing of lots. Matthias was the one appointed. Undoubtedly this principle manifested itself in the very common practice in the early

Church that whenever there was a vacancy the other bishops of the province conferred with the clergy and laity of the vacant See in the nomination and appointment of the new bishop.

The people were the first ordinarily to indicate their general desire, which was taken into serious consideration by the clergy of the diocese, though the selection of both, if found to be really prejudicial to souls, was liable to be put aside by the Metropolitan and other bishops, in whose power alone it was to consecrate the new bishop. In the fifth century St. Leo (can. 19, dist. 63), lays down that for the election of the Metropolitan "the bishops of the province are to meet at the Metropolitan city, that after hearing the wish of all the clerics and the citizens, the best priest or deacon of that church may be ordained.."

The people were at times, especially in the East, represented by the most important lay personages of the diocese. In the West, especially after the descent of the barbarians from the North, the King's choice took the place of the nomination by the people.

About the twelfth century the choice of the bishop was left in the hands of the "Chapter," or body of clergy officially connected with the Cathedral, subject to the Metropolitan's approval, and in the case of the choice of the Metropolitan subject to the approval of the Supreme Pontiff, from whom the Metropolitan received the pallium in sign of the granted consent.

In the fourteenth century the Pope reserved to himself the right of appointing bishops, and hence by slow degrees even the nomination by the "Chapter" fell into desuetude, notwithstanding the very earnest effort of the Council of Basle to revive not merely the nomination but the election of bishops by means of the "Chapters." Pope Leo X, in 1516, made a concordat with the King of France (Francis I), granting to him the nomination to all bishoprics and abbacies in France. This concordat became an object of admiration and imitation for other sovereigns, and to-day this is quite a common way for the selection of bishops in the so-called Catholic countries of Europe.

The article of the concordat of 1801, with the First Napoleon on this point, and which is still to-day the rule for France, reads: "The first Consul will name the new bishops for all future vacancies of Episcopal Sees, and the Apostolic See will grant them canonical institution, in accordance with the form used for France before the change of government." A proviso was fortunately added that the foregoing rule should not hold if any of the first Consul's successors should not profess the Catholic faith.

The Holy See recognized very speedily the evils that easily arise in the church from these concessions to the temporal rulers and has not failed to do away with them whenever It had the power.

Strange to say, the church was able to do this less in Catholic than in Protestant countries, though perhaps there is a natural explanation in the fact that a professedly Protestant government could hardly expect to thrust itself into the government of church matters, as much as so-called Catholic governments dared to do, under pretence of compensation for the protection which they are supposed to give to the church recognized by law as the church of the state.

The enslavement of the church has too often been the result of this pretended protection.

In the concordats in this century with the Protestant governments of Europe the Holy See revived the election of bishops by the Chapters. Thus in 1821 in Prussia the Chapters were authorized "to elect the new bishops from among the ecclesiastical residents of Prussia, who should be worthy and fitted according to Canon Law." The concordat with Hanover in 1824 required that all the clergy should select a certain number of candidates, those distasteful to the government to be dropped, the others to be submitted for final choice to the Chapter; finally the name of the appointee to be made known to the Supreme Pontiff, who would confirm the choice, unless he found the candidate to be unfitted for the position. In 1828 the Holy See agreed with the four Swiss Cantons of Lucerne, Berne, Soleure and Zug: that "the canons forming the senate (Chapter) should have the right to nominate the bishop from among the clergy of the diocese; and that the Holy Father will confirm him as soon as he obtains information of the candidate's fitness according to the customs of the Swiss church." In 1845 the concordat with the Swiss Canton of St. Gall decrees that the Cathedral chapter shall have the election of the bishop, who is to be confirmed by the Holy See; and that to be eligible for the episcopacy it is necessary that besides having the canonical fitness the candidate be selected from the diocesan clergy after having for several years been worthily and with distinction engaged in the cure of souls, public teaching or the administration of the diocese.

We are all aware that as a condition for the emancipation of Catholics in England the British government was extremely anxious to obtain the right of veto over the election of bishops in England and Ireland. Special motives of gratitude had bound

the Holy See to grant much to Lord Castlereagh, who had been at the Congress of Vienna in 1815 largely instrumental in the return of the Pontifical States to the Pope. There was even an appearance of yielding to this wish of the British government to obtain this veto, but undoubtedly the Holy See was delighted to see the vigorous protest of the bishop of England, Milner, and of the Irish bishops and of Daniel O'Connell, backed by the vast body of the Irish people against any such concession. This gave the Holy See an opportunity for delay, and when Catholic emancipation was granted, the motive of conceding the right of veto had vanished.

In the United States in 1789 all the priests, exercising the ministry, had been granted by the Holy See the privilege of determining in what city the first Episcopal See should be established and who should be the first bishop. Baltimore was fixed as the first See, and the Rev. John Carroll was appointed the first bishop. At the first diocesan synod, in 1791, Bishop Carroll consulted with the assembled clergy as to the propriety of establishing another episcopal See or the appointment of a coadjutor for himself. The latter alternative was adopted; and Rev. Leonard Neale was appointed coadjutor. When in 1808 Bishop Carroll suggested again the division of his diocese, immense in territory, the Holy See followed his recommendation in appointing to the bishoprics of Boston and Bardstown and Philadelphia the Abbes Cheverus and Flaget and the Franciscan friar, Rev. Michael Egan, whilst the Holy See took into its own hands the appointment for New York, that of the Dominican friar, Rev. Luke Concanen, who resided in Rome. In 1818 the Catholics of North and South Carolina and Georgia sent a petition to the Holy See through an Augustinian friar, the Rev. Robert Browne, asking for the division of the large diocese of Baltimore; and the erection of the dioceses of Richmond and Charleston was the result; though for twenty years the administration of Richmond diocese was left in the hands of the Archbishop of Baltimore.

The multiplication of provinces as well as of dioceses induced the Propaganda in 1834 to lay down the method to be followed for the designation of candidates for bishoprics. All the bishops of a province were empowered to take part in the selection and recommendation of candidates to a bishopric. Each bishop was also required to make out a list of three candidates, from whom he would wish his successor to be appointed. A bishop wishing a coadjutor could select three candidates. The bishops of the province could add other three names if they thought fit. All

these names, with remarks, were to be forwarded to the Congregation of the Propaganda, as recommended for the bishopric. The Holy See appointed the bishop. A later provision was added by the Propaganda in 1850, at the request of the Seventh Provincial Council of Baltimore, that these names should be transmitted to the Archbishops of the other provinces to give them a chance of communicating to the Propaganda any information they might think proper about the proposed candidates. This was again restricted in 1856, at the request of several provinces, to the selection of candidates for a bishopric who resided outside the province, and to the selection of candidates for the Metropolitan Sees. In 1859 the Propaganda asked all the archbishops whether they had any suggestion to make in the way of improving the method of designating candidates for bishoprics, but they replied that they had none to offer. In 1861 the Propaganda added the requirement that every three years each bishop should send to the Metropolitan and to the Propaganda the names of priests reputed to be fit for bishoprics, specifying their qualifications. In the case of a vacancy they were to meet to discuss the qualifications of the candidates and to agree upon three names to be sent to the Propaganda.

Undoubtedly among the priests there had been for a long time a very strong feeling that the selection by priests of the diocese would be a more satisfactory means of designating the candidates for the bishopric; and finally their wishes were heeded in the legislation of the Third Plenary Council of Baltimore, which under instructions from the Propaganda gave to the consultors and the irremovable rectors the designation of three candidates, with the reservation of a veto to the bishops of the province.

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## CHAPTER XXI.

Principles guiding the present selection of candidates for bishoprics. Method to be followed by the consultors and irremovable rectors in designating candidates. Independence required in the designation of candidates. Hence the irremovability of electors is important. Instruction from Rome of 1887 to safeguard the position of all missionary rectors.

An illustration of the difficulties in the matter of appointing bishops in so-called Catholic countries may be found in the serious conflict which has just come to a head between the Holy See and the Hungarian Government. This Government has actually undertaken to transfer by its own authority two bishops from Sees to

which they were appointed, without even consulting the Supreme Pontiff. It claims the right of nominating and transferring bishops as belonging to the Crown of Hungary ever since the days of the Apostolic King, St. Stephen, the Pope only having the right to preconise them, or announce their appointment. Pope Alexander III, in the twelfth century, had attempted to restrict this claim, but in vain. The Government has ever since asserted its supposed prerogative. Leo XIII, has undertaken to limit it.

This and similar conflicts give us the key to the explicit instruction which the Propaganda gave to our bishops in 1834, when laying down the rules for the selection of candidates for bishoprics. As the Holy See has reserved to itself, wherever it can enforce the reservation, the appointment of bishops throughout the world, the Propaganda cautioned the bishops of the United States not to use, when presenting their choice of candidates, the words nomination, election or any other that might indicate the final determination of any individual to an Episcopal See. They should simply designate those whom they thought fitted for the vacant Sees. The nomination proper and especially the appointment would remain entirely in the power of the Holy See, which might, when It thought proper, pass over all the names offered, and appoint whomsoever It thought fit.

The same principle governs the new form of selection of candidates for bishoprics, which was established by the Third Plenary Council of Baltimore in accordance with the instructions of the Propaganda, as accepted in the preliminary conference of archbishops and bishops in Rome in 1883.

Here is the instruction as laid down by the Propaganda: "When there is a question of proposing to the Holy See the names of those who appear worthy of recommendation for vacant Episcopal Sees, in first place the consultors should meet with the irremovable rectors of the vacant diocese, that they may indicate the names of those whom they judge to be worthy to the bishops, who are to have in view the qualifications required by the Holy See in the proposed candidates. This meeting of the consultors and rectors will be presided over by the archbishop, or a suffragan bishop of the same province to be deputed by him if the archbishop cannot be there; if there were question of the Metropolitan See, the meeting will be presided over by the suffragan bishop, who is the senior in order of consecration, or if he cannot be there, by another deputed by him. The rectors and others, as above, will give their vote after taking an oath that their suffrage is not founded on mere interest or favor; this suffrage will be merely

consultative. The president will send a report of this meeting to the Sacred Congregation and to the bishops. On an appointed day the bishops will meet to discuss the proposed names and others that may be offered by them, in accordance with the instruction of 1861, and then will make out a list of three candidates to be presented to the Apostolic See. If they should judge that the names proposed by the clergy should not be admitted, they will be expected to give the reasons to the Sacred Congregation."

This was the plan proposed originally by the Propaganda, with the exception of not requiring the presence of a bishop as presiding officer at the clergy's meeting, which was proposed by the American archbishops and bishops at the preliminary conference and accepted by the Propaganda. The Third Plenary Council follows almost precisely the wording of the Instruction, adding only that the voting by the clergy is to be secret, which, I presume, means by ballot. There are also added the special rules for the selection of candidates for a coadjutor to a bishop. Then the bishop himself or a clergyman deputed by him will preside at the meeting, and he is authorized to suggest the names of those whom he would deem most acceptable to himself, and even to make out a list of his own.

If a new diocese is to be formed, the consultors of the diocese or dioceses, from which the new one is to be taken, and the irremovable rectors of the district newly formed into a diocese, are to meet for the designation of the candidates. In both of these special cases, the selection of the candidates, as in the first general rule laid down, is to be submitted to the judgment of the bishops of the province, before the Holy See will take final action.

There has been an important change made in the make-up of the electors, or as we should perhaps more properly call them, designators of candidates for a bishopric. The first intention of the Holy See was that the consultors of the bishop should be for life, or at least until a serious cause should be found for putting them aside; but it has accepted the serious modification proposed by the Third Plenary Council that their term of office should only be for three years. Their appointment is thus subject to a triennial modification whereby the bishop again selects one-half according to his own wish and the other half from three names proposed by the clergy for each position. Only the board of consultors that happens to be in existence at the time of the vacancy by death or removal, or the choice of a coadjutor will to a certainty form part of the electing or designating board. This part, even though

consultative in the appointment of bishops, is reasonably deemed a great privilege of the irremovable rectors; and it is an advantage that their position is very explicitly secured by law, to insure them full freedom in opposing the selection of any, whose appointment they would deem improper for the welfare of religion. Their individual judgment may be wrong in expecting evil consequences from a particular appointment; yet it is important that the expression of their opposition should not render them liable to suffer materially from the dislikes or prejudices of those, to whose selection they offered objection, it is to be presumed, from honest motives. This is the special advantage of the so-called irremovable rectors, that they cannot be removed from their position under any circumstances, except by the form of procedure imposed upon the Church in the United States by the Propaganda, and embodied in the decrees of the Third Plenary Council. Even physical incapacity and want of ability to administer the spiritual or temporal affairs must in the case of irremovable rectors be subjected to the rigid examination of this new form of procedure; and even then it is necessary, if at all possible for the parish to bear the burden, to appoint an administrator, who will take charge of the department wherein the deficiency is marked. Even then the irremovable rector is not deprived of his vote at the meeting of consultors and irremovable rectors for the selection of candidates for the bishopric. He would forfeit this vote, if his absolute removal were found necessary, even in the case where he would be entitled to be called rector emeritus or honorary rector, and another acting irremovable rector were appointed in his place.

The Propaganda, in a decision dated March 28th, 1887, emphasizes again the distinction between the movable and irremovable rectors, yet very significantly gives greater facilities for the examination of complaints against the action of bishops who should attempt to transfer the so-called movable rectors from one office to another without grievous cause. After stating that even these movable rectors cannot be removed from their position or be otherwise punished, for delinquency or the violation of a disciplinary enactment, except after the right has been offered them of an investigation by the new form of trial, the Declaration of the Sacred Congregation admits that a mere transfer in their case does not, as it would in the case of an irremovable rector, require this full process of law, though this transfer must always, in every case, proceed only from grievous reasons. At times even an assignment to a lower position may

not require the process of law, if it has not the appearance of punishment.

There are especially with the rapid growth of our communities frequently recurring cases where serious administrative reasons may suggest such transfers. A new church may be required, new institutions may be found necessary in a community which was perhaps quite small, when placed in charge of a rector. He may be sickly, or a poor temporal administrator; yet the new work is imperatively needed for the good of souls. No disgrace will be entailed upon him by his removal, even though it be distasteful to him. The bishop is allowed in the case of movable rectors to make this transfer for such or similar grievous reasons, without the process of law.

In the case of irremovable rectors, the harm to souls is not very likely, because the districts forming their parishes are most likely to be fairly and fixedly settled, having already the necessary institutions for the welfare of souls. Then the law provides for the appointment of an administrator to remedy any such evil in their case without the removal; and the Propaganda, guided by the advice of our bishops, did not wish to place such a burden upon the movable missions, many of which are supposed to be subject to the many fluctuations of immigration. Even in these cases, if the rector removed considers himself to have been subjected to some great hardship, even without the appearance of undergoing punishment, the Propaganda now holds out to him the prospect of an easy way of settling the cause of his complaint, because it promises that in future instead of giving him the trouble of sending a long discussion of it to Rome, it will remit the complaint to the judgment of the Metropolitan, or in case of a complaint against a Metropolitan, to the nearest Metropolitan. This facilitates the redress of grievances, and yet does not shut off the final consideration by the Propaganda itself, if really necessary, of an inflicted grievance, because It never gives up the right of revising the decision of its own deputy. But in no case where any such transfer, and especially the lowering of position, should put on the appearance of punishment, would the Equity of Roman legislation allow it to occur without the right to the full procedure required for the disciplining or chastisement of clerics laid down under instruction from Rome by the Third Plenary Council.

## CHAPTER XXII.

Translations of bishops and rectors discountenanced by the laws of the Church. No removal as punishment without the right to a trial. Wrong should not be done that good may come. Motives for a transfer. Hardships that may occur in transfers.

In answer to the pretension of the Hungarian Government to transfer from their Sees, two bishops, the Holy See pointed out the old and traditional simile in the Church, which "compares the bond which binds a bishop to his See to that of matrimony which binds man and wife. This bond can therefore be severed only for grave reasons and ought, as a general rule, to remain intact; such translations are made by the Church herself very rarely, and that for very weighty reasons."

As a matter of principle, "a bishop who is well qualified for one See is not necessarily suited for another, where the circumstances may be altogether different. Again, a bishop who has gained a thorough knowledge of people and things in one diocese, may thus be called away to a diocese where he is a perfect stranger, and has to begin to painfully acquire all this knowledge over again."

These principles so clearly announced about the translations of bishops run through all the legislation and enactments of the Church wherever especially the charge of souls is the object in view.

The shepherd must know his sheep, and they must know his voice. Even in the subdivisions of the flock it is important that this constant relation be kept up. Hence an appointment to any position connected with the care of souls is intended by the Church to be permanent, even where there may not be a strictly legal perpetuity attached to the office.

The legal perpetuity does not necessarily involve absolute irremovability. It is well to remember that even the bond of matrimony is not so strictly binding, as not to admit legal separation for serious incompatibility of temper or for cruelty. It would not do to push the idea of irremovability from the charge of a diocese or a parish to the extent of never admitting the removal without the consent of the incumbent, where there should be grievous neglect of duty, or serious imprudence which should threaten to permanently alienate a large portion of the flock. If a delinquency is charged, which will be likely to carry with it punishment or disgrace, a fair and thorough investigation under the prescribed forms of law is not merely a privilege that may be granted to or withheld from the accused, but a strict legal right,

which should always be offered and can never be justly denied him.

The natural law prohibits the chastisement of any one whose guilt is not manifest. And the universal sense of mankind requires that any one charged with delinquency must have a proper chance of vindicating himself. No man must be punished unheard. And all church legislation, especially that made under the guidance of the supreme authority invariably recognizes this principle.

At times, however, there are good reasons entirely apart from wrong-doing which may prompt one to renounce his position; and these reasons may become so imperative as to call from the higher authorities an exceptional strong pressure, even a certain coercion to obtain his resignation. The welfare of the people is undoubtedly the supreme law, and the salvation of souls is the cause above all other causes to prompt the action of the Church.

Provision is therefore always made for the removal or transfer of a bishop from a diocese and of a rector from a parish, even where there should not be any charge of moral wrong-doing. The permanent dislike of the people, sufficient to alienate them from using their ministry, when clearly made manifest, is such a powerful motive, even though at times there may be no wilful wrong-doing or at least none sufficient to produce so great an evil. Where this extraordinary reason for making a transfer imperative may exist without sin on the part of the incumbent, it has always been deemed necessary to safeguard the reputation of the one so transferred. Even the welfare of the people is not a sufficient reason to do an injustice to an individual. Wrong should not be done, that good may come. The transfer should therefore never be made for such motives to a position markedly lower, for such lowering would imply in the cases supposed a delinquency where there had been but lack of discretion or incompatibility of temper. Hence came the Roman adage and shrewd practice, that "a man is promoted to be removed." A higher honorary position may be given to take away from doing harm one who has been found perhaps full of zeal but indiscreet; the higher position may easily be such as to remove him from the likelihood of his repeating the harm. Only delinquency can be punished, other defects should if possible be corrected; they must be tolerated in one whose sacred character shuts off for life any other career.

In the case of a bishop, who is removed for similar motives to those adduced above, very frequently if removed entirely from his diocese, he is appointed a titular archbishop. This at once before the public saves his honor and reputation. In the case of an

irremovable rector in the United States being found utterly incapable, without moral fault of his, to administer the parish, it is provided that he will receive the title of honorary rector. The case is more difficult when there is question of the movable rectors. It is settled clearly by the latest decision of the Propaganda of March 28, 1887, that they must never be removed for a delinquency or for a violation of disciplinary enactments, or punished in any way, without the offer of a trial by the procedure prescribed for the United States by the Propaganda in 1883. It is also clearly laid down that they must not be transferred from one mission to another except for grievous reasons. The above reasons given for the transfer even of a bishop or an irremovable rector are among the reasons why the transfer of the movable rectors may take place. The essential difference is that for the transfer of a "movable" rector there is not prescribed the form of procedure, or thorough investigation required in the former cases. The conscientious judgment of the bishop of the necessity of such transfer is sufficient for his guidance; yet he is obliged to hold himself in readiness, on presentation of complaint to his and the priest's superior, to give the motives which may have induced him to make the transfer. If these motives were not clearly sufficient the Church legislation provides for a reversal of the act of transfer because the spirit of this legislation is opposed to such transfers, and the presumption is against them. The burden of proof of the wisdom of the act falls upon him who has followed an exceptional course. Again, whilst the movable rector may not object to the transfer from the mission over which he has presided, he may find some special hardship in the mission to which he has been transferred detrimental to his health, or involving fatigues to which his age, settled tastes, or health may render him inadequate. If there should be a sufficient lowering of his position to admit easily the suspicion of wrong-doing, where there has been none alleged, he would have a clear right to indemnification for the loss of reputation.

If any wrong-doing had been alleged, he would have had a clear right to a trial by the prescribed procedure, if he desired it. There are undoubtedly cases where lowering of position may be justified by notorious incapacity where no suspicion of wrong will be aroused; but these are very rare. In them the bishop is authorized to follow his conscientious judgment, subject to revision by his superior. All church legislation is diametrically opposed to the system of patronage which so easily creeps into the dispensing of offices and positions in worldly governments from personal

favor or from interested motives. The church stigmatises as simony not merely bribery (*munus a manu*) but flattery (*munus a lingua*) directed to secure spiritual gifts of position. This spirit manifests itself in the oath, required of the priests who are to designate the candidates for a bishopric, that they are induced by no personal interest or favor to present any name for this office. In the same way the Council of Trent provided that for the appointment to parishes there should be by the impartial synodal examiners a thorough preliminary examination in all the branches of theological knowledge and practice of the candidates. The bishop is required to choose from those declared fit for the position the one whom he conscientiously believes to be the best adapted to the place. This is the law now for the United States with regard to the irremovable rectors. It was the earnest recommendation of the Second Plenary Council of Baltimore that this or a similar plan f examination should be extended as far as possible to the appointment to all the missions in the whole country. It is very important for the people to realize that not favor but real genuine merit has been the moving cause in the appointment of their pastors. The people have also the right that where a pastor has really devoted himself to their interests, he should not be taken from them against his will, unless the higher interests of the Church require his promotion to a higher place. Strictly speaking except in very rare cases, no one is really obliged to accept a a higher place. It is very seldom indeed that the supreme authority appeals to the command requiring "in virtue of holy obedience," the acceptance of a higher place.

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## CHAPTER XXIII.

**Summary of the subjects treated of in this pamphlet. The legislation of the Propaganda consistent from its emendation of the first Provincial Council of Baltimore, in 1829, to the last declaration of March, 1887, that no one can be removed without a just cause. No one to be punished without a trial. The Propaganda facilitates the hearing of complaints. Roman legislation founded on natural equity.**

Roman legislation is traditionally founded on natural equity, and a principle once laid down very seldom needs recall. From the beginning the Propaganda watched with careful eye all the legislation that was being gradually framed for this developing country, and as has been seen It put a limitation to the exaggerated views taken at times of the obligation of priests. Thus It pointed out in revising the First Council of Baltimore that Bene-

dict XIV had emphasized the meaning of the obedience promised by the priest at the reception of Sacred Orders to be that he will fulfill the duties attached to the position to which he was assigned at the reception of Sacred Orders, and remain under the jurisdiction of the bishop among whose clergy he is enrolled.

The obligation of obedience was primarily in connection with the place (locus pius) to which he was then attached; and it is understood that he should not abandon it without the permission of the bishop. This very obligation of obedience therefore supposes his permanent assignment to that place, till he is willing to be parted from it, or till some weighty reason occurs for his transfer.

The weight of this reason in some cases must be tested in a certain defined way, in others a certain amount of leeway is allowed to the conscience of the superior, but his action, if not founded on justice and on the real welfare of souls, will be readily put aside by the higher authority to whose consideration a properly formulated and substantiated complaint is submitted. The duty of a priest to lead a clerical life comes from his reception of the Sacrament of Holy Orders, and in this his life is to be regulated in accord with the general laws of the Church concerning the clerical state.

The special duties of the individual priest spring from the special office to which he is assigned when admitted to the priesthood. He also promises obedience to his ordinary, whereby, as the First Council of Baltimore in its second decree under the guidance of the Propaganda explains, the priest is obliged to remain in the same diocese and to be subject to its bishop, till canonically released.

The special duties of a priest in the United States spring from the oath to the Propaganda that without its permission, or that of the Holy See, he will not join a religious order, and that for his life he will devote his labors to the salvation of souls under the entire direction and jurisdiction of the Ordinary, for whose diocese he is ordained. In a strictly legal sense this oath binds the priest directly to the Propaganda, whence the "title of mission" emanates, and the Propaganda thus is the ordinary guardian of the rights that come to each priest from this assumed title of ordination. The Propaganda makes a condition that this "title of mission" will not be used as an excuse for wandering from one diocese to another, and therefore requires that the missionary will swear to work for souls under the entire direction and jurisdiction of the bishop, for whose diocese he is ordained. This

oath of the priest does not give a bishop in a missionary country any more extensive power than a bishop has elsewhere.

The extra duties imposed by the oath devolve upon the priest to devote himself for life in that special diocese to the work of saving souls. For the proper understanding of this it is important to keep in mind that many of the other titles of ordination do not exact or even suppose any direct work for the salvation of others. The title of "poverty" in religious orders, of benefice and patrimony for secular priests, are often entirely disconnected from any work for the care of souls, nor is the promise of obedience to the ordinary made by all priests, ever invoked to impose upon them any obligation to hear confessions, to administer the sacraments even to the sick and dying. There is not any strict obligation for a priest ordained under the title of mission, by virtue of his oath, to accept the charge of a parish, however much the bishop may deem it desirable that he should do so. As long as he devotes himself to the care of souls, subject to the rules and regulations of the diocese for which he was ordained, he complies with the obligation contracted by his oath. He may have excellent reasons, which may not even be appreciated by the bishop, for not undertaking a task of managing a parish, which may be seriously distasteful to him.

We have seen that for weighty administrative reasons, which are not in any way connected with the accusation of reasonable suspicion of wrong doing, a bishop is authorized in the United States to transfer certain movable rectors from one mission to another. It is well to recall the earnest admonition and exhortation of the Second Plenary Council that bishops do not undertake to act upon this authorization except after weighing carefully the merits of those transferred and only for serious reasons. In other words, they are to be guided not by favor or personal likes and dislikes, but in view of the past labors and zeal of those transferred, and for the promotion of the welfare of souls.

This was more and more emphasized by the Propaganda in the supplement to its instruction for trials of clerics of 1878, when in 1879, recognizing the occasional utility of these transfers of movable rectors without the procedure of law. It laid down clearly that "bishops must be careful not to transfer priests from place to place against their will, except for serious reasons. But if there be question of removing definitely a rector from his office on account of delinquency, this must not be done without a hearing before the Commission of Investigation."

We see that the Propaganda far from receding from the principle of ordinary permanency on the part of all rectors always recognized here confirms again the law of equity that no one shall be punished without a thorough investigation and full opportunity of explanation on the part of the accused. And while to-day the "Commission of Investigation" has given way to the regular "Episcopal Court," these principles of justice are shown to be maintained in their integrity and to be more explicitly developed in the newest and latest decision of the Propaganda, which insists expressly that the form of procedure laid down in the Third Plenary Council for clerics be used whenever a charge involving wrong-doing is made against a movable rector with a view to his removal or deposition. At the same time a specific arrangement is made that where a transfer is considered not to excite a suspicion of wrong-doing, but yet is deemed to be a serious hardship by the movable rector, he is to transmit his complaint to the Propaganda, which will depute the Metropolitan to act upon it if the complaint is against a bishop, and the neighboring Metropolitan, if the complaint is made against a Metropolitan.

This valuable document is so clear and precise as to deserve being transcribed in its entirety. Its title is "on the way of procedure in changing the movable rector." It is dated May 20th, 1887, and is signed by Cardinal Simeoni as Prefect and Archbishop Jacobini as Secretary, but in the name of the whole Congregation, and thus it gives most authoritatively the latest explicit pronouncement of the Roman authorities for the equitable treatment of movable rectors. It is directed to His Eminence Cardinal Gibbons for transmission to all the archbishops of the United States, that they may in turn communicate its contents to the bishops of their respective provinces.

"In the Third Plenary Council of Baltimore, tit. X, chap. 3, §§ 1, 2, as also in the instruction of this Sacred Congregation which begins "*Cum magnopere*" for trials of clerics, the rules and regulations were prescribed by which clerics are to be tried. It was not, however, defined and decreed in what cases the bishops were held to follow the legal process when there was question of depriving movable rectors of missions of their office, or of transferring them to another office.

Now, however, the Most Eminent Fathers placed over the Sacred Congregation of the Propaganda, meeting in General Assembly on the 28th of March, 1887, have decreed thus: "In the case of the removal or of a total privation of the office of rector in punishment of crime or guilt which requires disciplining, the

canonical procedure in accord with the aforesaid instruction (*Cum magnopere*) and with the decrees of the Third Plenary Council must be followed. If there be question of the transfer of a rector from one mission to another, or even to an inferior office, the ordinaries are not bound to follow the canonical procedure; it is, however, necessary, that there should be serious reason for such action, and full account taken of the past merits, as laid down in the Third Plenary Baltimore Council, tit. 11, chapt. V, § 32. If in the case of such transfer a complaint is made to the Sacred Congregation, the Sacred Congregation will remit it to the Metropolitan, or where there is question of a Metropolitan, to the neighboring Metropolitan."

This last provision will be very much welcomed as an easy way of settling on the spot grievances which can only be thoroughly appreciated by those who can take proper cognizance of the local hardships, so easily inflicted by hasty transfers from place to place. The arguments for and against the transfer will need to be accurately noted and recorded for inspection by the Propaganda. The equity of the decision of its deputy will be thoroughly scanned by the Sacred Congregation, which will not fail to reverse it if not in accord with the right. Definite rules and standards of equity in such matters will soon be the consequence. The result will probably be the extension in the not distant future to almost all the parishes of the strictly legal irremovability which is now granted to the favored few. We cannot but recognize that this was the desire of Rome when it suggested that not merely one in ten, but at least one in ten, should be the adopted rule for the number of irremovable rectors. Practically it will be seen that the transfer of a movable rector against his will, will be found so often in conflict with the rules of equity recognized in Rome, that it will be deemed more fair to put almost all on a par with the irremovable parishes.

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